Federal Register

2–19–04 Thursday
Vol. 69 No. 33 Feb. 19, 2004

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(ISSN 0097-6326)

Federal Register

2–19–04 Thursday
Vol. 69 No. 33 Feb. 19, 2004

Pages 7979–7862

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 772

RIN 0560–AG67

Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Correcting amendment.

SUMMARY: This document corrects the final regulations published December 16, 2003 (68 FR 69948), which consolidated servicing regulations for the Minor Loan Program currently administered by the Farm Service Agency. This amendment corrects an editorial mistake relating to a regulatory reference.

EFFECTIVE DATE: February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: 202–720–7862; Facsimile: 202–690–1196; e-mail: *mel_thompson@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: This document corrects final regulations that consolidated and clarified the servicing policies of the Farm Service Agency's Minor Loan Programs published in the **Federal Register** on December 16, 2003. Section 772.9(a)(3) as promulgated incorrectly states, "An exchange in accordance with § 772.7(b) has been concluded." This document replaces the reference to § 772.7(b) with the correct reference to § 772.8.

■ For the reason stated above, 7 CFR 772.9 is corrected by making the following amendment:

PART 772—[AMENDED]

■ 1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

■ 2. Revise paragraph 772.9(a)(3) to read as follows:

§ 772.9 Releases.

(a) * * *

(3) An exchange in accordance with § 772.8 has been concluded.

Signed in Washington, DC, on February 11, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–3532 Filed 2–18–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 145

[Docket No. 03–017–3]

National Poultry Improvement Plan; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on November 14, 2003, and effective December 15, 2003, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. In one instance in that final rule, we misidentified the type of birds to be tested under the U.S. Avian Influenza Clean program for waterfowl, exhibition poultry, and game bird breeding flocks. Therefore, we are amending the provisions of the Plan so that they correctly identify the type of birds to be tested.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on November 14, 2003 (68 FR 64507–64512, Docket No. 03–017–2), and effective December 15, 2003, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks.

As part of that final rule, we added a new U.S. Avian Influenza Clean program to the regulations governing waterfowl, exhibition poultry, and game bird breeding flocks in § 145.53(e). Under that program, we require that a sample of at least 30 birds must test negative for antibodies to avian influenza in order for a flock to retain its U.S. Avian Influenza Clean classification; for primary breeding flocks, the maximum interval between tests is 90 days, and for multiplier breeding flocks, the maximum interval between tests is 180 days. However, the regulations provide that a sample of fewer than 30 birds may be tested at any one time if all pens are equally represented and a total of 30 birds are tested within each 90- or 180-day period.

In paragraph (e)(2)(ii) of § 145.53 in our final rule, we stated "[a] sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 unvaccinated sentinel birds are tested within each 180-day period." Our reference to "unvaccinated sentinel birds" in § 145.53(e)(2)(ii) was in error. Everywhere else in § 145.53(e) where we refer to required testing, we refer simply to "birds," and there are no provisions made in the U.S. Avian Influenza Clean program described in § 145.53(e) for the use of sentinel birds or the setting aside of unvaccinated birds. Therefore, we are amending § 145.53(e)(2)(ii) in this document to remove the words "unvaccinated sentinel" before the word "birds" in that paragraph.

List of Subjects in 9 CFR Part 145

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 145 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 145.53 [Amended]

■ 2. In § 145.53, paragraph (e)(2)(ii) is amended by removing the words "unvaccinated sentinel".

Done in Washington, DC, this 12th day of February, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3594 Filed 2–18–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–330–AD; Amendment 39–13437; AD 2004–02–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. That AD currently requires relocating the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment, and accomplishing follow-on actions. This document corrects a missing reference to the AD number in a certain section of the AD. This correction is necessary to ensure that operators have the correct AD number when referring to the AD or when performing corrective actions.

DATES: Effective March 3, 2004.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 3, 2004 (69 FR 4057, January 28, 2004).

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION: On January 14, 2004, the Federal Aviation Administration (FAA) issued AD 2004–02–02, amendment 39–13437 (69 FR 4057, January 28, 2004), which applies to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. That AD requires relocating the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment, and accomplishing follow-on actions. That AD was prompted by reports that water accumulates in the pitot 1 and pitot 2 drain valves in the nose landing gear (NLG) compartment where they are subjected to freezing temperatures. Frozen water in the drain valve can expand and cause the pitot drain valves to fail so that the airspeed indication system tubing is open to ambient pressure. The actions required by that AD are intended to prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew.

Need for the Correction

Information obtained recently by the FAA indicates that the AD number is missing from the PART 39—AIRWORTHINESS DIRECTIVES section, paragraph 2., of the AD.

The FAA has determined that a correction to AD 2004–02–02 is necessary. The correction will add the AD number to paragraph 2.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains March 3, 2004.

Since this action only adds the AD number to a certain paragraph of the AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

■ 2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2004–02–02 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–13437. Docket 2002–NM–330–AD.

Applicability: Model EMB–135 and –145 series airplanes; as listed in EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; and EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew, accomplish the following:

Relocation

(a) Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first: Relocate the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment; and install a plug, washers, and a nut to close the hole in the structure where the pitot 1 and pitot 2 drain valves were removed; per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Installation

(b) After accomplishment of paragraph (a) of this AD but prior to further flight: Install a new placard and apply sealant on the placard per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Actions Accomplished Per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–34–0070, original issue, dated April 23, 2002; EMBRAER Service Bulletin 145–34–0070, Change 01, dated September 23, 2002; and EMBRAER Service Bulletin 145–34–0070, Change 02, dated December 2, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is

authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register as of March 3, 2004 (69 FR 4057, January 28, 2004). Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2002–06–01R1, dated November 8, 2002.

Effective Date

(f) The effective date of this amendment remains March 3, 2004.

Issued in Renton, Washington, on February 10, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3492 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16504; Airspace Docket No. 03–ACE–88]

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Greenfield, IA.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 9, 2003 (68 FR 68507) and subsequently published a correction to the direct final rule in the **Federal Register** on February 3, 2004 (69 FR 5012). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 3, 2004.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–3631 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16083; Airspace Docket No. 03–AAL–19]

Establishment of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule in the **Federal Register** on Monday, December 15, 2003 (68 FR 69598). The final rule established Class E airspace at Manokotak, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–30908 published Monday, December 15, 2003 (68 FR 69598), established Class E airspace at Manokotak, AK. The Class E airspace was incorrectly defined as the Manokotak/New Airport and should be changed to the Manokotak Airport.

■ Accordingly, pursuant to the authority delegated to me, the name of the airport at Manokotak, AK is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Corrected]

■ On page 69598, Column 3 and page 69599, column 1 change all references to Manokotak/New Airport to read Manokotak Airport.

Issued in Anchorage, AK, on February 9, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–3627 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 106

[USCG–2003–14759]

Outer Continental Shelf Facility Security

AGENCY: Coast Guard, DHS.

ACTION: Notice of agency policy.

SUMMARY: On Wednesday, October 22, 2003, the Coast Guard published a series of final rules for maritime security requirements mandated by the Maritime Transportation Security Act of 2002, including provisions for mobile offshore drilling units (MODUs) not subject to the International Convention for the Safety of Life at Sea, 1974, and certain fixed and floating facilities on the Outer Continental Shelf (OCS) other than deepwater ports. This Notice of agency policy clarifies which fixed and floating OCS facilities are subject to regulation under Title 33 CFR part 106. This Notice also clarifies how the Coast Guard establishes applicability to Title 33 CFR part 106.

DATES: This policy is effective as of November 21, 2003.

FOR FURTHER INFORMATION CONTACT: For further information on the subject of this Notice, contact Lieutenant Commander Eric Walters (G–MOC) U.S. Coast Guard by telephone at (202) 267–0499 or by electronic mail at *ewalters@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The requirements of 33 CFR part 106 apply to owners and operators of any fixed or floating facility, including MODUs not subject to 33 CFR part 104, operating on the Outer Continental Shelf (OCS) of the United States for the purposes of

engaging in the exploration, development, or production of oil, natural gas or mineral resources, that are regulated by 33 CFR Subchapter N, and that meet certain operating conditions of crewing or production. These regulations were developed under the authority the Maritime Transportation Security Act, which among other things, requires the development of security plans designed to deter, to the maximum extent practicable, transportation security incidents (TSIs). TSIs are security incidents resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The Coast Guard recognized that fixed and floating facilities come in a wide array of designs, and support a variety of activities, functions and processes that are intrinsic to the exploration, development or production of oil, natural gas, or mineral resources. Without the benefit of security measures, these facilities may be susceptible to a TSI. To ensure we included all relevant OCS facilities, we made our maritime security regulations applicable to those OCS facilities regulated under 33 CFR subchapter N (see 33 CFR 106.105. Applicability). Subchapter N applies to a wide variety of OCS facilities, including facilities used to support drilling, extraction, and transmission. The security requirements of Title 33 CFR Part 106 apply to those OCS facilities now regulated under subchapter N, as may be further limited by the "consequence thresholds" discussed below.

The Coast Guard used the National Risk Assessment Tool (N–RAT) to determine "consequence thresholds" for various vessel and facility types to determine which vessels and facilities could be involved in a TSI. However, with regard to the facilities regulated by Title 33 part 106, and as indicated in the Preamble to the temporary interim rules published on July 1, 2003 (68 FR 39250), we worked with the Minerals Management Service (MMS) to compare OCS facility production rates and operations to develop appropriate "consequence thresholds." This is because the N–RAT was not able to provide sensitivity to the OCS facility size or production level that was sufficient for assessing the "significant loss of life", "economic disruption in a particular area", "transportation system disruption", or "environmental damage", that is necessary for us to make a TSI determination.

In Title 33 CFR 106.105, the Coast Guard identified three operating conditions to determine if the "consequence threshold" for a TSI was present on a particular OCS facility: the facility hosts more than 150 persons for 12 hours or more in any 24 hour period continuously for 30 days or more; the facility produces greater than 100,000 barrels of oil per day; or the facility produces greater than 200 million cubic feet of natural gas per day.

These criteria have been developed solely to establish the "consequence thresholds" for a TSI. Because a "consequence threshold" is applied as a metric, the particular activity, function or process that causes the threshold to be reached is irrelevant. Therefore, the Coast Guard uses the term "production" to include the handling, transfer or transmission of oil or natural gas by an OCS facility. In that regard, reference is made to the definition of "production" used in 33 CFR subchapter N (140.10). Simply put, the Coast Guard finds that an OCS facility that supports a pipeline transmission junction transporting 100,000 barrels of oil per day presents the same TSI risks as an OCS facility that supports wells extracting 100,000 barrels of oil day from a down hole formation. Similarly, the Coast Guard finds that an OCS facility that supports both extraction and transportation activity, where neither the extraction nor the transportation components individually exceed the "consequence threshold", but the aggregate of both activities exceeds the "consequence threshold", presents the same TSI risk.

Policy: Title 33 CFR part 106 applies to those OCS facilities already regulated by 33 CFR subchapter N that meet the operating conditions of section 106.105 (a), (b) or (c). The Coast Guard uses the definition of the term "production" given in 33 CFR subchapter N (140.10) to include those activities, functions and processes that could render the OCS facility susceptible to a TSI. These activities, functions and processes may include, but are not necessarily limited to, the handling, transfer or transportation of oil or natural gas by an OCS facility supporting pipeline transmission junctions. The Coast Guard will continue to work with the Minerals Management Service (MMS) as necessary to refine and update the "threshold characteristics" upon which the applicability of 33 CFR part 106 is based.

To this end, the MMS has provided the Coast Guard with a list of OCS facilities that, according to MMS data, meet or exceed the "threshold characteristics" in 33 CFR part 106. The Coast Guard has sent letters to owners or operators of these facilities informing them that they must comply with the requirements of 33 CFR part 106. The Coast Guard intends to work closely with the MMS to identify all OCS facilities to which 33 CFR part 106 applies, and to inform the owners and operators of these facilities that they have been so identified. Owners and operators who believe their OCS facilities have been misidentified, or otherwise do not meet the "threshold characteristics" may appeal as prescribed in 33 CFR 101.420. While the Coast Guard will make a good faith effort to identify and notify the owners and operators of those OCS facilities subject to the requirements of 33 CFR part 106, ultimate responsibility for complying with 33 CFR part 106 rests with the cognizant OCS facility owner or operator.

Dated: February 12, 2004.

T.H. Gilmour,

Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–3619 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–03–027]

RIN 1625–AA09

Drawbridge Operation Regulations; Columbia River, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations of the dual vertical lift bridges on Interstate Highway 5 across the Columbia River, mile 106.5, between Portland, OR, and Vancouver, WA. Between July 15 and October 15, 2004, the lift spans will open for the passage of vessels only at scheduled times to accommodate a major rehabilitation of the mechanical and electrical systems of the bridges.

DATES: This rule is effective from 6:30 a.m. on July 15 to 9 p.m. on October 15, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD13–03–027], will become part of this docket and will be available for inspection or copying at the Commander (oan), Thirteenth Coast Guard District , 915 Second Avenue, Seattle, Washington 98174 between 7:30 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief Bridge Section, (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 5, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Columbia River, Oregon in the **Federal Register** (68 FR 52722). We received no comments on this NPRM. No public hearing was requested and none was held.

Background and Purpose

This temporary rule will enable the bridge owners to conduct a major rehabilitation project during the part of the year when water levels are typically low enough that most vessels do not need the drawspans to open for their passage. The seven million dollar project will completely replace the existing 1959 electrical system in both bridges and the 1916 gears in the northbound drawbridge. In addition, the operating control center will be rebuilt with improved visibility and new television cameras. During the first three weeks of the period, the dual lifts will remain in the down position to facilitate gear replacement. Thereafter, openings will be provided once every two weeks, if needed, until the end of the temporary period. Historically, water levels on the Columbia River fluctuate significantly over the course of an annual cycle. Essentially, water levels are dependent on the accumulation of snow in the winter and its melting in the spring and early summer. The annual dry season in the Pacific Northwest is typically from approximately July 15 to October 15. Usually rainfall begins to raise water levels again after October 15.

A river elevation of 6.0 feet Columbia River Datum (CRD) is the critical point for towboats on the Columbia River at and upstream of the bridges. Cargo towing is the main commercial use of the Columbia above the bridges. Large oceangoing vessels do not generally pass above these bridges. The towboats that ply that portion of the Columbia require 52 feet of vertical clearance. Most towing vessels and passenger tour vessels are able to pass through the highest fixed spans near midstream without requiring the vertical lift spans near the north shore to open when the river level is six feet or less.

The exceptions are the tallest sailboats, some construction derricks, and large structures that have been built upstream of the bridges at shore facilities. With the exception of the first three weeks of the affected period when the draws need not open, an opening will be provided every two weeks. During summer months the openings average less than one per day, mostly for sailboats, some of which could pass the higher fixed spans if antennas were lowered.

Discussion of Rule

We received no comments on the notice of proposed rulemaking.

The temporary rule authorizes a continuous closure of the draws from 6:30 a.m. July 15 to 9 p.m. August 6, 2004. On August 6 and 20, September 3 and 17 and October 1, 2004, openings will be provided on signal at 9 p.m. Openings need not be provided at times other than these from 9 p.m. on August 6 until 9 p.m. October 15.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

We do expect recreational sailboats to be affected by this temporary rule. This class of vessel most commonly requires openings of the subject drawbridges during the summer months. Some of these vessels will either have to find alternate moorage or otherwise be limited in their operating areas during the project. Others will be able to modify their top hamper by lowering antennas, instruments, masts, etc., in order to pass the bridge if the biweekly scheduled openings do not serve their needs. These vessel operators will receive notice of several months duration to plan their activities for summer 2004.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. We expect that some recreational sailboat owners will be affected by this proposal. Most other vessels will either not require openings of the draws during low water season or will be accommodated by the biweekly scheduled openings. Some sail boaters will have to change their moorage and itineraries or modify their vessels to avoid delays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section at (206) 220–7282.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6:30 a.m. on July 15, 2004, until 9 p.m. on October 15, 2004, in § 117.869, suspend paragraph (a) and add a new paragraph (d) to read as follows:

§ 117.869 Columbia River.

* * * * *

(d) The draws of the Interstate 5 Bridges, mile 106.5, between Portland, OR, and Vancouver, WA, need not open for the passage of vessels from 6:30 a.m. on July 15, 2004, to 9 p.m. on August 6, 2004, and at no other time until 9 p.m. on October 15 except for scheduled openings on signal at 9 p.m. on August 6 and 20, September 3 and 17, and October 1, 2004.

Dated: February 6, 2004.

Jeffrey M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 04–3623 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–04–003]

RIN 1625–AA09

Drawbridge Operation Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Thirteenth Coast Guard District, is temporarily changing the regulation governing the Broadway Bridge, mile 11.7, Willamette River at Portland, Oregon, so that the bridge need not open for vessel traffic unless 24 hours notice is provided from February 27 through November 15, 2004. Additionally, the change sets forth periods within this time frame, during which the bridge may remain closed to vessel traffic. This temporary rule will accommodate painting and repair of the bascule span.

DATES: This rule is effective from 7 a.m. on February 27 through 11 p.m. on November 15, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time between the date the request for this change was submitted to the Coast Guard and the start date of the scheduled maintenance and repairs. In addition, this temporary schedule has been coordinated with the waterway users, and should not cause a great disruption in the bridge's current usage. Currently, The drawspan averages only 2 to 3 openings a week, usually for grain ships. The Columbia River Pilots are able to give 24 hours notice of arrivals and departures, and most other vessels plying this reach of the Willamette River are able to pass the Broadway Bridge with its drawspan closed.

Good Cause for Making Rule Effective in Less Than 30 days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request less than 30 days prior to the scheduled painting and repair project. Delaying the effective date of this rule would be contrary to the public interest because the repair and maintenance require the bridge to be closed. This event has been coordinated with the waterway users. It is similar to other temporary operations authorized for this

bridge in the past, which drew no objections from waterway users.

Background and Purpose

The Multnomah County Bridge Section requested a temporary change to the operation of the Broadway Bridge, mile 11.7, Willamette River at Portland, Oregon, in order to complete a major rehabilitation project that includes painting and repairing the steel truss double-leaf bascule span. The span provides 87 feet vertical clearance above Portland datum 0.0 in the closed position. A work platform in place, reduces the normal vertical clearance by three feet.

The drawspan averages only 2 to 3 openings a week, usually for grain ships. The Columbia River Pilots are able to give 24 hours notice of arrivals and departures without inconvenience. Most other vessels plying this reach of the Willamette River are able to pass the Broadway Bridge with its drawspan closed. Presently, the draw opens on signal except that it need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday. These weekday closed periods do not apply to New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

Discussion of Rule

This temporary rule changes the operation of the Broadway Bridge from 7 a.m. on February 27 through 11 p.m. on November 15, 2004. During that time period, the bridge need not open for vessel traffic unless 24 hours notice is provided. In addition, the bridge need not open during the following periods in 2004: February 27 through March 2; March 4 through March 6; March 9 through March 11; March 13 through March 17; March 19 through March 23; March 25 through March 27; March 29 through April 1; April 3 through April 6; April 8 though April 10; April 12 through April 15; April 17 though April 21; and April 23 through April 26.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the majority of vessels plying the river will not be hindered by this change because most of the commercial and recreational vessels can pass the span without an opening. Grain ships bound for a facility just above the Broadway Bridge are able to coordinate movements with the temporary operations of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for- profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. There are no known small entities affected by this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under

figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no known effects of this rule that would warrant further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 7 a.m. on February 27 through 11 p.m. on November 15, 2004, in § 117.897, paragraphs (a)(1) and (a)(2) are suspended and a new paragraph (a)(5) is temporarily added to read as follows:

§ 117.897 Willamette River.

(a) * * *

(5)(i) The draws shall open on signal except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday the draws of the Steel (upper deck only), Burnside, Morrison, and Hawthorne Bridges need not open for the passage of vessels. These closed periods are not effective on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. At least one hour's notice shall be given for openings of the Steel Bridge (upper deck only), Burnside Bridge and Morrison Bridge, Monday through Friday, from 8 a.m. to 5 p.m. At all other times at least two hours notice shall be given by marine radio, telephone, or other means to the drawtender at the Hawthorne Bridge for vessels bound downstream. During Rose Festival Week or when the water level reaches and remains above +12 feet, the draws will open on signal without advance notice, except during the normal closed periods identified in this paragraph.

(ii) The Broadway Bridge need not open for the passage of vessels from 7 a.m. on February 27 to 11 p.m. on November 15, 2004, unless at least 24 hours notice is provided, except that the draw need not open during the following periods in 2004, each period beginning at 7 a.m. of the first day until 11 p.m. of the final day: February 27–March 2; March 4–March 6; March 9–March 11; March 13–March 17; March 19–March 23; March 25–March 27; March 29–April 1; April 3–April 6; April 8–April 10; April 12–April 15; April 17–April 21; and April 23–April 26.

(iii) Opening signals are as follows:

(A) Broadway Bridge, mile 11.7, two prolonged blasts followed by one short blast.

(B) Steel Bridge, mile 12.1, one prolonged blast followed by one short blast.

(C) Burnside Bridge, mile 12.4, one prolonged blast followed by two short blasts.

(D) Morrison Bridge, mile 12.8, one prolonged blast followed by three short blasts.

(E) Hawthorne Bridge, mile 13.1, one prolonged blast followed by four short blasts.

* * * * *

Dated: February 3, 2004.

Jeffrey M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 04–3622 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–024]

Drawbridge Operation Regulations; Treasure Island Causeway, Gulf Intracoastal Waterway, Pinellas County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Treasure Island Causeway Bridge across the Gulf Intracoastal Waterway, mile 119.0, Pinellas County, Florida. This deviation allows the west bascule of the bridge to remain in the closed position from 8 a.m., March 9, 2004, until 5 p.m., April 30, 2004. Only single leaf openings will be provided during this period in order to effect repairs.

DATES: This deviation is effective from 8 a.m., on March 9, until 5 p.m., on April 30, 2004.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–04–024] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Treasure Island Causeway Bridge across the Gulf Intracoastal Waterway, Pinellas County, Florida, is a bascule bridge with a vertical clearance of 8 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 80 feet. The current operating regulation in 33 CFR 117.287(g) requires that the bridge shall open on signal, except that from 7 a.m. to 7 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m., the draw shall open on signal if at least 10 minutes advance notice is given. On February 3, 2004, the bridge owner, City of Treasure Island, requested a deviation from the current operating regulations to allow the owner and operator to provide single leaf operations, to facilitate repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.287(g) to complete repairs to the bridge. Under this deviation, the Treasure Island Causeway Bridge, across the Gulf Intracoastal Waterway, mile 119.0, Pinellas County, Florida, need only provide single leaf openings from March 9 until April 30, 2004.

Dated: February 9, 2004.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 04–3620 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–118]

RIN 1625–AA09

Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations of the Miami

River drawbridges from the mouth of the river up to and including the N.W. 27th Avenue Bridge, mile 3.7, Miami, Florida. This rule adds a one-hour curfew during the noon hour for the Brickell Avenue, Miami Avenue, and S.W. Second Avenue bridges and places the Brickell Avenue Bridge on an hour and half-hour schedule. In addition, the draws shall open at any time for tugs, tugs with tows, and vessels in emergency situations.

DATES: This rule is effective March 22, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–03–118] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 11, 2003, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL, in the **Federal Register** (68 FR 47520). We received 78 comments on this NPRM. No public hearing was requested, and none was held.

Background and Purpose

Ten bridges along the Miami River fall under existing regulation 33 CFR 117.305. These bridges carry commuter traffic into and out of the downtown Miami area and its neighboring business districts. The current regulation requires the draw of each bridge from the mouth of the Miami River, up to and including the N.W. 27th Avenue Bridge, mile 3.7 at Miami, to open on signal; except that, from 7:30 to 9 a.m. and 4:30 to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. Public vessels of the United States and vessels in emergency situations involving danger to life or property are passed at any time. First, this rule adds an additional one-hour closure period for the noon rush hour, Monday through Friday, except Federal holidays, to the Brickell Avenue, Miami Avenue and S.W. Second Avenue bridges, in order to provide relief for vehicular traffic. This is in addition to the morning and afternoon closure periods. Second, the first bridge at the mouth of the river, the Brickell Avenue Bridge, which has a vertical clearance of 23 feet at mean high water and a horizontal clearance of 90 feet, will open only on the hour and half-hour. According to bridge tender logs, the Brickell Avenue Bridge currently opens fewer than two times per hour. The Brickell Avenue Bridge carries the majority of the vehicular traffic utilizing the ten bridges along the Miami River, and this rule provides commuters the opportunity to time their arrivals and departures. Draws shall open at any time for tugs, tugs with tows, and vessels in emergency situations. The third modification alleviates the burden on commercial tugs and tugs with tows that navigate the river only during certain tidal conditions. These vessels will be able to pass when optimal tidal conditions exist, notwithstanding the closure periods and the opening schedule in the rule. These changes will be in effect from 7 a.m. until 7 p.m., Monday through Friday, except Federal holidays.

Discussion of Comments and Changes

We received 78 comments on the NPRM, in favor of the proposed rule. One comment recommended that the noon closure period apply only to the Brickell Avenue, Miami Avenue and S.W. Second Avenue bridges, instead of all ten bridges up to and including N.W. 27th Avenue, mile 3.7. Applying a noon closure period to only these three bridges, vice all ten bridges, would still allow downtown traffic to pass during heavy noon time periods, and provide for the reasonable needs of navigation.

We carefully considered the comment and agree. The final rule now requires noon closure periods for only the Brickell Avenue Bridge, the Miami Avenue Bridge and the S.W. Second Avenue Bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule affects vessel traffic through these bridges only in that vessels will need to time their passage through these bridges to avoid the additional afternoon hour closure and meet the hour and half-hour openings of the Brickell Avenue Bridge. The rule also affects heavy commercial traffic, which will now be able to pass during certain tidal periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule affects all vessel traffic through these bridges. Vessels will need to time their passage through these bridges to avoid the additional afternoon hour closure and to meet the hour and half-hour openings of the Brickell Avenue Bridge. The rule also affects heavy commercial traffic, which will now be able to pass during certain tidal periods.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard offered small businesses, organizations, or governmental jurisdictions that believed the rule would affect them, or that had questions concerning its provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.305 to read as follows:

§ 117.305 Miami River.

(a) General. Public vessels of the United States, tugs, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw of each bridge listed in this section at any time.

(b) The draws of the S.W. First Street Bridge, mile 0.9, up to and including the N.W. 27th Avenue Bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:35 a.m. to 8:59 a.m. and 4:45 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels.

(c) The draws of the Miami Avenue Bridge, mile 0.3, and the S.W. Second Avenue Bridge, mile 0.5, at Miami, shall open on signal; except that, from 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels.

(d) The draw of the Brickell Avenue Bridge, mile 0.1, at Miami, shall open on signal; except that, from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour. From 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday except Federal holidays, the draw need not open for the passage of vessels.

Dated: January 30, 2004.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 04–3621 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule clarifies procedures for determining offsets for the Postal Service's reasonable costs from semipostal differential revenue.

DATES: This final rule is effective February 5, 2004.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268–6555.

SUPPLEMENTARY INFORMATION: On November 20, 2003, the Postal Service published a notice of proposed rulemaking (68 FR 65430) soliciting public comment on proposed changes to 39 CFR 551.8, which establishes procedures for determining offsets from semipostal differential revenue. No comments were received by the closing date, December 22, 2003. Thus, the Postal Service is adopting the proposed rule without substantive change. In preparing the final rule, nonsubstantive edits were made to section 551.8(d)(1).

The final rule is intended to clarify cost offset policies and procedures. Edits to section 551.8(a) and (c) expand the types of "comparable stamps" that could be used in conducting cost comparisons. The final rule no longer limits the universe of comparable stamps to commemorative stamps. This measure would accordingly allow other types of stamps, such as definitive or special issue stamps, to serve as a baseline for cost comparisons.

Edits to section 551.8(c) specify that different comparable stamps may be used for specific cost comparisons. The final rule thus clarifies that the Postal Service could select different comparable stamps for discrete cost comparisons. This will enhance accuracy in conducting comparative analysis for purposes of determining cost offsets.

Edits to section 551.8(d)(1) provide that costs less than $3,000 will be offset from differential revenue, but only if they are charged to a semipostal-specific finance number.

Edits to section 551.8(d)(2) clarify that costs that do not need to be tracked include not only those costs that are too burdensome to track, but also those costs that are too burdensome to estimate.

Finally, edits to section 551.8(d)(6) and (f) clarify that printing, sales, distribution, and several other types of costs could be recovered when they materially exceed the costs of comparable stamps.

The Postal Service hereby adopts the following revisions to the Code of Federal Regulations.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

■ For the reasons set out in this document, the Postal Service hereby amends 39 CFR part 551 as follows:

PART 551—SEMIPOSTAL STAMP PROGRAM

■ 1. The authority citation for 39 CFR part 551 is revised to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, 416.

■ 2. In § 551.8, revise paragraphs (a), (c), (d), (e), and (g) to read as follows:

§ 551.8 Cost offset policy.

(a) Postal Service policy is to recover from the differential revenue for each semipostal stamp those costs that are determined to be attributable to the semipostal stamp and that would not normally be incurred for stamps having similar sales; physical characteristics; and marketing, promotional, and public relations activities (hereinafter "comparable stamps").

* * * * *

(c) For each semipostal stamp, the Office of Stamp Services, in coordination with the Office of Accounting, Finance, Controller, shall, based on judgment and available information, identify the comparable stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (*e.g.*, manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable stamps may change during or after the sales period, and different comparable stamp(s) may be used for specific cost comparisons.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the Office of Accounting, Finance, Controller. Costs that will not be tracked include:

(1) Costs that the Postal Service determines to be inconsequentially small, which include those cost items which are less than $3,000 per invoice and are not specifically charged to a semipostal finance number.

(2) Costs for which the cost of tracking or estimation would be burdensome (*e.g.*, costs for which the cost of tracking exceeds the cost to be tracked);

(3) Costs attributable to mail to which semipostal stamps are affixed (which are attributable to the appropriate class and/or subclass of mail); and

(4) Administrative and support costs that the Postal Service would have incurred whether or not the Semipostal Stamp Program had been established.

(e) Cost items recoverable from the differential revenue may include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs of flyers and special receipts;

(3) Costs of changes to equipment;

(4) Costs of developing and executing marketing and promotional plans in excess of the cost for comparable stamps;

(5) Other costs specific to the semipostal stamp that would not normally have been incurred for comparable stamps; and

(6) Costs in paragraph (g) of this section that materially exceed those that would normally have been incurred for comparable stamps.

* * * * *

(g) Other costs attributable to semipostals but which would normally be incurred for comparable stamps would be recovered through the postage component of the semipostal stamp price. Such costs are not recovered, unless they materially exceed the costs of comparable stamps. These include, but are not limited to, the following:

(1) Costs of stamp design (including market research);

(2) Costs of stamp production and printing;

(3) Costs of stamp shipping and distribution;

(4) Estimated training costs for field staff, except for special training associated with semipostal stamps;

(5) Costs of stamp sales (including employee salaries and benefits);

(6) Costs associated with the withdrawal of the stamp issue from sale;

(7) Costs associated with the destruction of unsold stamps; and

(8) Costs associated with the incorporation of semipostal stamp images into advertising for the Postal Service as an entity.

Neva Watson,

Attorney.

[FR Doc. 04–3497 Filed 2–18–04; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No.: NHTSA–2001–10774; Notice 3]

RIN 2127–AI41

Automotive Fuel Economy Manufacturing Incentives for Alternative Fueled Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Consistent with the Alternative Motor Fuels Act of 1988, this final rule extends the incentive created by that Act to encourage the continued production of motor vehicles capable of operating on alternative fuels. The incentive, originally enacted to begin the process of moving the nation toward the use of alternative fuels and away from petroleum dependence, has resulted in the creation of a fleet of vehicles able to operate on alternative fuel. To continue the process of moving the nation toward energy independence and to remain dedicated to the policies underlying the enactment of the Act, this final rule extends the alternative fuel CAFE incentive as contemplated in the NPRM for four additional model years.

DATES: *Effective Date:* The amendments made in this final rule are effective October 1, 2004.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than April 5, 2004.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590: For non-legal issues: Mr. Kenneth Katz, Fuel Economy Division, Office of Planning and Consumer Standards, NVS–132, Room 5320, telephone (202) 366–0846, facsimile (202) 493–2290. For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, Room 5219, telephone (202) 366–5263, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of Final Rule

This Final Rule completes the agency's implementation of a statutory requirement to consider the continuation of credits accorded to dual fueled automobiles pursuant to the Alternative Motor Fuels Act of 1988 (AMFA; Pub. L. 100–494). As part of that Act, Congress provided that motor vehicles subject to corporate average fuel economy (CAFE) standards are accorded special consideration if they are capable of running either flexibly (dual fueled) or exclusively (dedicated) on fuel other than petroleum.[1] AMFA encourages the production of these vehicles by providing a specified credit toward the calculation of a manufacturer's CAFE performance. Congress provided this incentive to enhance the nation's energy independence. Congress ensured that the incentive is not negated through the setting of more stringent CAFE standards by prohibiting the agency from considering the AMFA CAFE incentive when determining maximum feasible CAFE standards.

AMFA sets certain parameters for the amount and duration of the incentive program. For model years 1993 through 2004, the maximum allowable credit toward a manufacturer's average fuel economy is 1.2 miles per gallon (mpg). The statute then provides that the Department of Transportation (through NHTSA) must either extend the incentive program for dual fueled vehicles beyond the 2004 model year or issue a **Federal Register** notice justifying termination of the program. The statute limits any extension to no more than four model years and the amount of credit during any such extension to 0.9 mpg per manufacturer. Congress also required that NHTSA provide it with a report discussing the progress of the program, apparently to help Congress determine whether any further legislative initiatives would be necessary.

This final rule completes the agency's implementation of the statutory mandate by extending the program as authorized by the statute. The agency's decision comes after a considered review of the public comments solicited in anticipation of preparing the Report to Congress, the public comments filed in response to the agency's March 2002 Notice of Proposed Rulemaking, and the legislative history surrounding the enactment of AMFA.

The agency's Report to Congress found that the results of the AMFA incentive program to date have been mixed in that the program led to the development and production of vehicles capable of operating on alternative fuels but has not yet generated an infrastructure to support fully the use of alternative fuels in such vehicles. The Report did not recommend abandoning the AMFA incentive program. On the contrary, the Report concluded that continuation of the program should include additional measures to ensure its success, and in particular measures aimed at encouraging the increased use of alternative fuels and the expansion of an alternative fuel infrastructure.

The agency finds that continuation of the AMFA incentive program, consistent with existing statutory limits, best serves the Congressional intent underlying AMFA and best serves the nation's continuing public policy interest in encouraging energy security. In enacting AMFA, Congress sought to solve the so-called "chicken and the egg" problem inherent in the development of an alternative fuel infrastructure. Vehicle manufacturers could not justify producing vehicles capable of operating on alternative fuels if people would not buy them or be able to use them, and energy companies could not justify investing in developing fueling infrastructure for fuels of unknown consumer acceptance and utility.

As Congress intended, the CAFE credits accorded through AMFA have induced the creation of a fleet of approximately 3.4 million dual-fueled vehicles through the 2003 model year which, in turn, has begun to spur investment in alternative fuel stations and other infrastructure development. Congress specifically did not choose any particular alternative fuel when enacting AMFA. Instead, Congress provided a sufficient amount of time for experimenting with different fuels, for creating a fleet of vehicles capable of using one or more of those fuels and for beginning the development of an infrastructure to support that fleet. Recognizing that more time may be needed to accomplish the end result, Congress mandated that the agency extend the CAFE incentive through rulemaking (with specified limitations) or publish a **Federal Register** notice explaining why it chose not to do so.

In providing for special CAFE incentives to help create that fleet, Congress recognized in 1988 that its action was just a beginning toward energy security. The legislative history does not suggest that Congress believed the CAFE incentive provided to these vehicles would, in and of itself, lead to infrastructure supporting alternative fuel use and energy independence. Rather, the legislative history is replete with references to the initiation of a process to "begin" such development. If NHTSA were to terminate the incentive program now, the gains that have been made would be lost and there would be no possibility of obtaining the benefits yet to be gained through the continued development of a light vehicle transportation system capable of operating on domestically produced alternative transportation fuels.

II. Statutory Background

Recognizing the substantial energy use by the transportation sector, the need to conserve the Nation's energy resources, and the need to reduce the Nation's dependence upon foreign energy sources, Congress passed the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163). That Act amended the Motor Vehicle Information

[1] There are two classes of alternative fuel motor vehicles. Dedicated alternative fuel motor vehicles are motor vehicles designed to run only on alternative fuel. Vehicles that are capable of operating on a conventional fuel (either gasoline or diesel) as well as on an alternative fuel are considered to be "dual fuel" or "flexible fuel" motor vehicles.

and Cost Savings Act (Pub. L. 92–513) by adding provisions for improving the fuel efficiency of light-duty motor vehicles. Standards based on Corporate Average Fuel Economy ("CAFE"), the production weighted average of a manufacturer's fleet of new passenger cars and light duty trucks, were mandated for newly manufactured passenger cars produced after 1977 and light trucks after 1978. Congress authorized the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) to promulgate these CAFE standards.

Along with the improvements in light transportation fleet fuel efficiency, Congress undertook a strategy to encourage, and ultimately implement, the use of alternative fuels to reduce the nation's dependence on petroleum. Congress chose not to mandate any particular energy source, but rather to create market incentives to break the "chicken and the egg" problem plaguing any movement away from the developed petroleum infrastructure. AMFA was enacted to initiate a process to encourage the production of a fleet of vehicles that would in turn give rise to consumer acceptance and ultimately lead to the development of infrastructure to distribute and make alternative fuel available.

Section 6 of AMFA provided new incentives for the manufacture of "dual fueled" vehicles that can operate on either an alternative fuel or a petroleum-based fuel such as gasoline or diesel. Under the special procedures for calculating the fuel economy of those vehicles contained in that section, dual fueled vehicles are assigned a higher fuel economy value for CAFE purposes in recognition of the fact that they can displace gasoline or diesel fuel use, and therefore reduce dependence on foreign oil. This special CAFE calculation procedure encourages the production of dual fueled vehicles by helping manufacturers who build them to meet CAFE standards.

Congress considered the incentive to manufacture dual fueled vehicles so important that it took steps to ensure its continued effectiveness by providing that the agency could not consider the availability of the AMFA credits when determining the maximum feasible fuel economy level for any particular fleet in any particular model year. As Congressman Dingell pointed out during the House debate on the AMFA Conference Report (H. REP. No. 100–929), adjusting CAFE levels to account for the AMFA incentive would negate the incentive:

> A provision is included in the legislation to ensure that the incentives provided by this bill are not erased by the Secretary's setting the CAFE standard for cars or trucks at a level that assumes a certain penetration of alternative fueled vehicles. The conferees are aware that the statute requires CAFE standards to be set at the "maximum feasible" level, and that DOT traditionally has determined that level in connection with examining the individual fuel economy capabilities of the larger manufacturers. It is intended that this examination will be conducted without regard to the penetration of alternative fuel vehicles in any manufacturer's fleet, in order to ensure that manufacturers taking advantage of the incentives offered by this bill do not find DOT including those incentive increases in the manufacturer's "maximum fuel economy capability." This, of course, would wipe out the benefits associated with the increases if it resulted in commensurate increases in the CAFE standard. 134 CONG. REC. 8091 (1988).

AMFA established the eligibility criteria and procedures for calculation of the incentive benefits, and further provided that in establishing maximum feasible fuel economy levels, the Secretary "may not consider the fuel economy of dedicated automobiles and shall not consider dual fueled automobiles to be operated only on gasoline or diesel fuel." 49 U.S.C. 32902(h). AMFA then provided for a special calculation for determining actual CAFE performance that provides special consideration for the fact that the vehicles can, and may, operate on alternative fuel sources.

The Senate version of the bill, and ultimately AMFA itself, balanced the need to encourage the development of a fleet of alternative fueled vehicles against concerns that the fuel economy program would be unduly hindered by placing limits on the amount of the CAFE credit available to any manufacturer and by including partial and ultimate sunset provisions. The program was to be in effect through the 2004 model year, and could be continued on more limited terms by the Secretary for up to an additional four years. These limits were specifically aimed at addressing the possibility that dual fueled vehicles might be run entirely on gasoline. (House Debate on Conference Report, Section 6, Vol. 134, *Congressional Record*, Sept. 23, 1988); (Senate Debate on Conference Report, Section 6, Vol. 134 *Congressional Record* (Sept. 20, 1988). Indeed, the Senate Committee Report on S. 1518, the Senate version of AMFA (S. REP. No. 100–271) explained that: "Recognizing that the dual fuel vehicle is a transitional vehicle that might often operate on gasoline, the Committee established reasonable caps in the increase in CAFE so that the broader purposes of CAFE would remain intact."

In enacting AMFA, Congress undertook to encourage the development of a fleet of vehicles capable of running on alternative fuels in order to create the incentive for the development of an infrastructure to support it. Congress recognized that motor vehicle makers were "reluctant to produce automobiles unless there is a demand for them, consumers will not purchase cars for which there is an inadequate fuel supply, and an adequate fuel supply is unlikely to be developed until there are a significant number of alternative fuel vehicles."

Congress recognized that the special CAFE incentive contained in AMFA would be a facilitating factor in the development of a transportation system incorporating alternative fuels. The legislative history makes clear that Congress did not expect these CAFE credits solely to drive the development of such a transportation system. Indeed, the legislative history is replete with comments expressing Congress' belief that AMFA, and its CAFE credit, would "begin" a process and that it may well be necessary to continue that process beyond its initial statutory timeframe. For example:

- The incentives provided under this bill are modest yet sufficient to begin this important program. The bill is important, however, both as a step toward increasing our energy options and as a reflection of a new recognition of a need for action on the economic front. 134 CONG. REC. 4101 (statement of Sen. Rockefeller).
- In my judgment, we need to begin an effort to convert a portion of our automotive fleet to methanol and other alternative fuels. *Id.* at 4102 (statement by Senator Danforth).
- This bill begins to solve the [chicken and the egg] dilemma * * * in ways that should help to instill consumer confidence, gain valuable experience, encourage the development, production and sale of vehicles capable of operating on both conventional fuels (gasoline and diesel) and alternative fuels (alcohols and natural gas), and encourage the development of alternative fuel retail pumps for consumer use. H.R. REP. No. 100–476 at 9 (1987).
- We also do not believe that this bill and the opportunities offered by it, including the CAFE incentive, will be a panacea. We have a healthy skepticism about when and how these vehicles will be developed. We are not optimistic that foreign and domestic automakers will transform many lines of passenger cars

in the early 1990s to alternative fueled vehicles. *Id.* at 12.

• The importance of this bill is to provide a beginning and to emphasize the importance of developing now an alternative fuels transportation network for the benefit of present and future generations. *Id.*

• Alternative fuels will not be universally or even widely available, however, when the new vehicles are first available. Except for fleets with a central fueling location many of the early alternative fuel vehicles will need to be capable of running on both the alternative fuel and gasoline. 134 CONG. REC. 8090 (1988) (statement of Rep. Sharp).

• So this really is a very important step forward. It is a very powerful incentive for the automakers to produce automobiles that can consume alternative fuels. Id. at 12,916 (statement of Sen. Danforth).

Congress provided that the Secretary of Transportation could extend the CAFE credit program for not more than four consecutive model years and explain the basis on which the extension would be granted (49 U.S.C. 32905(f)). Should the Secretary choose not to extend the program, the statute requires the publication of a **Federal Register** notice explaining the reasons for that decision. The statute imposes no particular criteria to be applied in making that determination, but rather leaves the decision to the discretion of the Secretary.

III. Regulatory Background

A. Fuel Economy Standards

Congress enacted the Energy Policy and Conservation Act (EPCA) in December 1975 to help address the nation's dependence on foreign oil. EPCA provided for the issuance of CAFE standards for passenger automobiles and for automobiles that are not passenger automobiles (light trucks). The CAFE standards set minimum performance requirements in terms of an average number of miles a vehicle travels per gallon of gasoline or diesel fuel. By statute, Congress set passenger car standards for model years 1978 (18 mpg), 1979 (19 mpg), 1980 (20 mpg) and 1985 and thereafter (27.5 mpg). Those standards remained effective by statute unless the Secretary of Transportation changed them through rulemaking. In contrast to passenger cars, Congress did not specify CAFE standards for light trucks. Instead, it provided authority to the Secretary to establish those standards administratively. The Secretary delegated the authority to promulgate CAFE standards to NHTSA.

Market conditions in the mid and late 1980s led the agency to reconsider established CAFE fuel economy standards to account for consumer preferences that had rendered the standards economically impracticable, despite manufacturers' good faith efforts to comply. Accordingly, passenger car CAFE standards were reduced to 26.0 mpg for the 1986 through 1988 model years and to 26.5 mpg for 1989. Light truck CAFE standards set at 20.5 mpg for the 1987 through 1989 model years were reduced to 20.0 mpg for the 1990 model year. Meanwhile, Congress enacted AMFA in 1988 in an attempt to further reduce the Nation's dependence on foreign oil by encouraging the development of a fleet of vehicles capable of running on alternative fuel.

The passenger car CAFE standard returned to the statutory level of 27.5 mpg between model years 1990 and 1996, while light truck CAFE standards rose slightly through those years from 20.0 mpg to 20.7 mpg. In April 1994, NHTSA issued an Advanced Notice of Proposed Rulemaking stating its intent to increase the light truck CAFE standards for some or all of model years 1998 to 2006. Congress acted to restrain the agency from acting further on this intention.

In enacting the Department of Transportation and Related Agencies Appropriations Act for FY 1996 (Pub. L. 104–50) in November 1995, Congress included a provision prohibiting the agency from using any funds to prescribe corporate average fuel economy standards for automobiles "in any model year that differs from standards promulgated for such automobiles prior to enactment of this section." This same prohibition was included in the appropriations acts for each of the 1997 through 2001 fiscal years, effectively foreclosing NHTSA from acting to change the passenger car and light truck CAFE standards applicable to the 1999–2003 model years. During those years, Congress kept the CAFE incentive for dual fuel vehicles intact, making no effort during those years to restrict the incentives despite having mandated stability in CAFE standards.

While the Department of Transportation and Related Agencies Appropriations Act for FY 2001 (Pub. L. 106–346) was similar to the prior appropriations acts in that it contained a identical restriction on CAFE rulemaking, the conference committee report for that Act directed that NHTSA fund a study by NAS to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118). The NAS submitted its report to the Department of Transportation on July 30, 2001.

One of the recommendations in the NAS report was that "CAFE credits for dual-fuel vehicles should be eliminated, with a long enough lead time to limit adverse financial impacts on the automotive industry." (at 114) The NAS report stated that, "the provision creating extra credits for multifuel vehicles has had, if any, a negative effect on fuel economy, petroleum consumption, greenhouse gas emissions, and cost." (at 111) The report also indicated that the production of these dual-fuel vehicles enables "automakers to increase the production of less fuel efficient vehicles." (at 111)

In a letter dated July 10, 2001, Secretary of Transportation Mineta asked the House and Senate Appropriations Committees to lift the restriction on the agency's ability to spend funds for the purpose of setting and modifying CAFE standards. In response, Congress enacted the Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87 (December 18, 2001)) without any provision restricting the Secretary's authority to prescribe fuel economy standards.

On March 31, 2003, NHTSA established new fuel economy standards for light trucks applicable to model years 2005–2007. These new standards represent the largest increase in light truck fuel economy standards in 20 years and will result in substantial savings in petroleum consumption over the lifetime of the vehicles manufactured in those model years. In issuing these standards, the agency discussed the Nation's continuing need to conserve energy and noted the various public and private efforts underway to develop advanced technology vehicles.

B. Other Initiatives to Promote Energy Independence

The CAFE incentive program contained in AMFA is part of the Administration's comprehensive approach to energy security. While the incentive program encourages the mass production of dual-fuel vehicles and the use of alternative fuel, other programs exist to address longer-term technologies and the introduction of fuel-efficient vehicle technologies. Last year, President Bush announced a Hydrogen Fuel Initiative to support for active research and development of commercially viable hydrogen-powered fuel cells for transportation and stationary power applications, and the

infrastructure to support them. As the President indicated in his 2003 State of the Union address, successful execution of this Hydrogen Fuel Initiative would mean that the first car driven by a child born today could be powered by fuel cells, and pollution-free. The President's Hydrogen Fuel Initiative complements the Department of Energy's FreedomCAR initiative, a partnership with the U.S. auto industry aimed at developing technologies needed for mass production of safe and affordable hydrogen fuel cell vehicles. Together, these initiatives will enable automobile manufacturers to decide to offer affordable and technologically viable hydrogen fuel cell vehicles in the mass consumer market by 2015 and the ability to produce and deliver such vehicles to the market by 2020.

The private sector is also responding to the Nation's need to improve energy security through efficient transportation options. On January 6, 2003, General Motors announced that it would offer an optional hybrid (gasoline/electric) powertrain on several of its most popular models, including light trucks. While pointing out that its plans involve "relatively low volumes," General Motors also stated that its initiative would make it "well positioned to meet market demand as it develops." Similarly, Ford Motor Company will introduce an optional hybrid electric powertrain in its Escape Sport Utility Vehicle (SUV), beginning in model year 2005. As Ford explained:

> While a few automakers have introduced small, low-volume hybrid-electric cars, Ford is introducing its first HEV on a family-sized sport utility to increase mass customer appeal. The hybrid-electric powertrain also has been developed with additional applications and vehicles in mind to expand the potential impact of the environmentally responsible technology.

DaimlerChrysler will introduce an optional diesel engine in the Jeep Liberty SUV, also beginning with the 2004 model year. The company claimed in December 2002 that American consumers could save about 800 million gallons of oil annually if they chose to purchase clean diesel engines at the same rate as purchased by European consumers. According to DaimlerChrysler: "Today's modern diesel vehicles should be part of the solution to improving fuel efficiency and reducing carbon dioxide emissions. Diesels lead to up to 30 percent improvement in fuel economy, while reducing carbon dioxide emissions an average of 20 percent."

IV. March 2002 Report to Congress

AMFA required the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the EPA, to complete a study "of the success of the policy" of the CAFE incentive for dual fuel vehicles and to report on the results of the study, including preliminary conclusions on whether the CAFE incentive should be extended for up to four more model years. The study and conclusions were to consider the availability to the public of alternative fueled automobiles and alternative fuel, energy conservation and security, environmental considerations and other relevant factors.

NHTSA published a Request for Comments on May 9, 2000 (65 FR 26805) (Docket No. NHTSA–2000–7087), seeking public input on the success of the program. The agency received a number of comments on the published notice: from automotive manufacturers (General Motors Corporation, DaimlerChrysler Corporation and Ford Motor Company), an automotive association (Alliance of Automobile Manufacturers), alternate fuels coalitions (National Ethanol Vehicle Coalition, Clean Fuels Development Coalition and Members of the Renewable Fuels Association), and State governments.[2] All of these commenters expressed support for extending the CAFE incentive program.

Subsequent to the closing of the comment period, additional letters in support of extending the CAFE incentive program were received from several Members of Congress. Also, subsequent to the closing of the comment period, a joint letter expressing opposition to the extension was received from the Sierra Club, the American Council for an Energy-Efficient Economy, the Center for Auto Safety and the U.S. Public Interest Research Group.

All of these submissions are docketed in the DOT Docket Management System, Docket No. 7087. They may be found by conducting a search under that number at *http://dms.dot.gov/*.

The agency gathered information from other sources as well. These included the DOE Alternative Fuels Data Center (AFDC) and publications from the Energy Information Administration (DOE/EIA), the Center for Transportation Research at Argonne National Laboratory, and the Oak Ridge National Laboratory (ORNL). The AFDC was created to facilitate implementation of the directives of AMFA, to gather and analyze information on the fuel consumption, emissions, operation, and durability of alternative fuel vehicles, and to provide information on alternative fuel vehicles to government agencies, private industry, research institutions and other related organizations. The agency also used data from EPA's National Vehicle and Fuel Emissions Laboratory, the California Energy Commission, the General Accounting Office, the American Petroleum Institute and the American Methanol Institute.

Based on consideration of the comments, other information and the factors specified in AMFA, the agency submitted a report in March 2002 Report that concluded that the CAFE incentive program had succeeded in incentivizing the development of a fleet of vehicles capable of operating on alternative fuels, but had not yet succeeded in creating the necessary infrastructure to support the actual use of alternative fuels. The Report also found that the success of the program could be further enhanced through the identification of additional policies and programs to encourage more use of alternative fuels in the vehicle fleet that has been built to accommodate them. The Report did not recommend any suspension or termination of the CAFE incentive program.

V. Notice of Proposed Rulemaking

On March 11, 2002, the agency published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 10873) (Docket No. NHTSA–2001–10774; Notice 2) proposing to extend the dual fuel incentive program through the end of the 2008 model year. As we explained in the NPRM, this proposal was based on our tentative conclusion that granting the extension would preserve the opportunities for promoting energy security and decreasing reliance on foreign petroleum by encouraging continued production of dual fuel vehicles while other efforts to increase the growth of a dual fuel infrastructure could be undertaken. We also noted our concern that any extension of less than four years would be insufficient given the relatively recent influx of large numbers of dual fuel vehicles in the marketplace.[3]

[2] On March 23, 2001, the Governors' Ethanol Coalition sent a letter to Secretary Norman Mineta strongly urging DOT to extend the CAFE credit incentive.

[3] We said that, in light of this recent influx, "(i)t is, therefore, not *yet* clear whether the continuing presence of these vehicles, their ability to use alternative fuels, programs intended to increase the use and production of alternative fuels and other conditions will stimulate the expansion of the

Continued

The NPRM reflected our initial conclusion that the benefits of extending the incentive provisions are justified by its potential benefits:

> The agency's tentative decision to extend the incentive program for four years is based on its assessment that the energy and other costs of the incentive program are justified by the potential benefits. We are unable to predict with certainty how much alternative fuel use, which is a critical element to the realization of benefits, will increase. Adoption of the proposed four-year extension entails a risk that manufacturers might be producing dual-fuel vehicles that operate only on petroleum fuel. On the other hand, if the agency were to allow the program to terminate, there would be an equal risk that late-blooming alternative fuel technology and production would be wasted and the opportunities for eventual reductions in petroleum use would be lost. A four-year extension is, in NHTSA's view, a reasonable reconciling of those risks. Such an extension will provide opportunities for further development of measures to encourage alternative fuel use and, if those policies are successful, result in the development of a domestic fuel supply and infrastructure with either little or no increase in petroleum use." (at 10881)

As the NPRM pointed out, benefits arising from the CAFE incentive program include the development of a fleet of vehicles that can use alternative fuels, reduce dependence on foreign oil and help lessen demand for conventional fuels, thereby helping to keep fuel prices lower than they otherwise would be in the absence of the incentive program. We also observed that if sufficient numbers of dual fuel vehicles exist and spur development of an alternative fuel infrastructure, the nation would (to a degree) be further insulated from the impacts of "oil shocks" resulting from sudden disruptions to the petroleum supply, as the Nation's transportation system would be less dependent on oil supply, and therefore, less vulnerable to such disruptions.

VI. Summary of Comments

We received numerous comments, responding both to our solicitation of views before preparing the March 2002 Report to Congress and our proposal to extend the AMFA dual fuel incentive. Comments were received from environmental and safety advocacy organizations such as the Alliance to Save Energy (ASE), Environmental Defense (ED), Renewable Fuels Association (RFA), American Council for an Energy Efficient Economy (ACEEE), Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Sierra Club, Public Citizen, and Center for Auto Safety (CAS).

We also received comments from automobile manufacturers and trade associations—including Ford Motor Company (Ford), General Motors Corporation (GM), DaimlerChrysler Corporation (DC), and the Alliance of Automobile Manufacturers (the Alliance)—and alternative fuel groups and grain producers—including the National Ethanol Vehicle Coalition (NEVC), National Corn Growers Association (NCGA), Colorado Corn Administrative Committee (CCAC), Maryland Grain Producers Association (MGPA) and Minnesota Corn Growers Association (MCGA). Comments were also received from two individuals—Edward Parker and Joseph Darling.

In general, commenters expressed either complete support or complete opposition to the proposed four-year extension. None of the commenters indicated that they believed changing the duration of the proposed extension was appropriate. Automobile manufacturers, automotive trade groups, grain producers, and alternative fuel groups favored the extension. Environmental and automobile safety advocacy groups did not support the agency's proposal. The two private citizens did not support the extension.

Those supporting the extension argued that the CAFE incentive program was successful in achieving the goal of increasing the number of dual fuel vehicles. They indicated that the infrastructure supporting the use of alternative fuel in these vehicles is also continuing to grow. Noting that public awareness of the existence of alternative fuel vehicles and the fuels they use continues to increase, they pointed out that the infrastructure to support alterative fuels (in particular E85, a blend of 85% ethanol and 15% gasoline) has grown in recent years and continues to expand. They argued that Congress would not have intended the substantial investment in alternative fuel vehicles and the burgeoning infrastructure to be terminated just as the incentive is starting to show benefits.

The automobile manufacturers listed the vehicles they have built capable of running on ethanol and the various efforts they have made, and continue to make, to build awareness and support for alternative fuel use. Since the late 1990s, they have produced approximately 3.4 million dual fuel vehicles capable of running on alternative fuel.[4] They further pointed out that having this fleet of dual fuel vehicles improves the Nation's energy security by creating the potential for using non-petroleum fuels if a crisis in petroleum supply develops and encourages continued research into the development of cheaper and cleaner alternative fuels and the infrastructure to support their use.

The ethanol community and its supporters argued that the investment in alternative fuel vehicles has begun to spur the anticipated investment in an infrastructure to support actual fuel use. Both investments would be lost were the agency not to continue implementing the public policy encouraging alternative fuels and their use. The ethanol community and numerous government representatives outlined the strides currently being made to enhance the availability of E85 and to educate consumers on its potential. They urged the agency not to abandon the program during this investment stage by eliminating the incentive provided to automakers to produce and sell vehicles capable of operating on alternative fuel.

Many of those who commented on the NPRM had also provided submissions in response to the Request for Comments. Others expressed their views on the merits only at that time. For example, we heard from numerous Members of Congress: Senators Grassley, Bond, Bayh, Allard, Hagel, Ashcroft and Levin all expressed unconditional support for extending the incentive. Similarly, the members of the Congressional Auto Caucus (Congressmen Upton, Oxley, Bonilla, Kildee, Dingell, Frost, Ewing, Camp, Buyer, Hoekstra, Manzullo, LaTourette, Knollenberg, Stupak, Barcia, Kilpatrick, Kaptur and Stabenow) made clear their position that more alternative fuel vehicles would be built only if the incentive were continued. Senator Daschle urged the agency to extend the incentive, noting, however, that "in the end, the success of the program should be measured not only by the number of flexible fuel vehicles produced, but by the actual use of alternative fuels by

alternative fuel infrastructure as envisioned by Congress in creating the dual fuel incentive program." (at 10874) (Emphasis added.)

[4] Automakers have also been working toward the widespread application of advanced technologies, such as hybrid electric and modern diesel engines, that may substantially enhance the nation's energy security and overall fuel economy. The Administration and private industry are also supporting the development of fuel cell technology, which over the long run, presents even more potential for substantial fuel economy savings. All of these efforts, including AMFA, are part of a broad array of efforts to encourage development of technologies and infrastructure that collectively and individually will help to reduce the nation's dependence on foreign oil as a primary energy source.

those vehicles." Senator Daschle suggested looking "for ways to encourage the establishment of additional alternative fuel refueling stations around the country."

State governments also supported extending the incentive. The Governors of Kansas, Wisconsin, New Mexico, and Missouri each urged the agency to extend the incentive. The Governor of Wisconsin pointed out:

> The flex-fuel vehicle credit program for auto manufacturers is essential for maintaining support for a cleaner environment through the use of alternative fuels. Until a substantial network for infrastructure is developed, the flex-fuel vehicle credit will assist advancing improvements in infrastructure and enhance the status of alternative fuels. Nationally, the U.S. will gain energy independence from foreign oil and individually gain a cleaner fuel.
>
> Wisconsin is currently assisting in an effort to expand the availability of alternative fuel infrastructure. Until that infrastructure matures, the use of bi-fuel and flex-fuel vehicles will be necessary as a bridge fuel to meet the requirements of the Energy Policy Act and create a demand side draw for the necessary infrastructure to support an all dedicated fuel fleet.

Those opposing the extension of the incentive program voiced common themes in their arguments. They argued principally that the program should not be deemed a success because it has not yet resulted in the widespread use of alternative fuels. Instead, they stated out that, by allowing extra credit toward CAFE requirements, the program so far has allowed the production of more vehicles that are less fuel-efficient than would have been produced had manufacturers met their CAFE obligations without the incentives. Thus, they contended, the result of the incentive is greater fuel consumption and exhaust emissions without substantial offsetting benefit.

Because the incentive provides additional CAFE credit to vehicles capable of running on alternative fuel, but which in fact have largely been using gasoline, those opposed to the incentive argue that its extension will actually increase dependence on foreign oil.[5] Accordingly, these commenters also believe that continuation of the incentive will have adverse environmental consequences and argued that the adverse effects of higher gasoline use overwhelm the benefits of the smaller amount of alternative fuel used to date.

Some commenters also consider it unlikely that a fleet of dual fuel vehicles might be useful in the event of sudden disruption in oil supply. ACEEE and NRDC stated that such a crisis is likely to arise so quickly that sufficient time would not be available for existing ethanol production capability to meet demand or for new ethanol production capacity to be built. NRDC argued that ethanol could be added to conventional gasoline to make gasohol blends burned by conventional vehicles, rendering a fleet of dual fuel vehicles unnecessary.

The Sierra Club and UCS raised concerns that if ethanol were used as a MTBE substitute, there might not be sufficient ethanol for use as an alternative fuel. Both organizations noted that the phasing out of MTBE in California and the Northeast could require the use of all of the current projected expansion in ethanol production to meet the refining industry's need for an MTBE substitute.

CAS argued that a difference in tax treatment makes 10 percent ethanol (referred to as gasohol or E10) more preferred by the ethanol industry than E85 blends. According to CAS, E10 blends qualify for a 5.3¢ per gallon exemption from the motor fuel excise tax, which is the equivalent value of 53¢ per gallon.[6] CAS questioned whether the ethanol industry would support the continued expansion of E85 because the ethanol used in E85 blends qualifies for a 53¢ per gallon tax credit, which is less attractive than the up-front tax exemption provided for E10.

Commenters disagreed on whether continuation of the incentive is likely to spur the development of an infrastructure that has not yet reached critical mass. Many argued that consumer demand remains focused on gasoline and that unless a demand develops for alternative fuels, fuel suppliers will have no incentive to increase the supply or expand the number of alternative fuel outlets currently in existence. Some argued that given the cost to consumers of extending this program, energy conservation efforts would be better directed toward improving fuel economy or installing ethanol stations to fuel the E85 dual-fuel vehicles already produced.

On the other hand, the automobile industry and the ethanol community pointed to their efforts to begin the development of an infrastructure to support ethanol use in the ethanol-capable dual fuel vehicles built since the late 1990s. They cited evidence of continued growth of alternative fuel infrastructure. For example, Minnesota had recently experienced a 70% increase in the number of E85 fueling stations. The Minnesota Corn Growers Association, Colorado Corn Administrative Committee and Maryland Grain Producers Association, Inc. indicated that the number of E85 stations in their states had recently increased. The Alliance cited a number of initiatives being pursued by automobile manufacturers to promote the expanded use of E85 fuel and increase the number of E85 outlets.

Contending that the present alternative fuel fleet is reaching "critical mass," the supporters of the CAFE incentive program argued that discontinuing the incentive now would waste the substantial investment already made in a dual fuel vehicle fleet and result in the abandonment of the burgeoning infrastructure of E85 fueling stations. The National Ethanol Vehicle Coalition specifically credited the dual fuel incentive program for the existence of a growing fleet of dual fuel vehicles. Although development of the fueling infrastructure has not progressed as rapidly as the growth of this fleet, the existence and size of the dual-fuel vehicle fleet is clearly linked to the incentive program. Discontinuing the CAFE incentive program now, thereby foreclosing the continued growth of the dual fuel fleet and potential demand for and use of alternative fuels, would also foreclose the potential for alternative fuels to contribute significantly to the nation's energy security.

On June 18, 2003, the Energy Future Coalition[7] issued a comprehensive set of energy policy recommendations in a report entitled "Challenge And Opportunity: Charting A New Energy Future" (*http://www.energyfuturecoalition.com/full_report/index.shtm*).[8] Officials from a number of

[5] The ACEEE also questioned whether some dual fuel vehicles in fact qualified for the incentive taken by the manufacturers. According to ACEEE, the energy efficiency for some vehicles qualifying for the dual fuel credit program is less when operating on alternative fuel than on conventional fuel, even when the varying heating values for each fuel are considered.

[6] Since January 1, 2003, these incentives have been 5.2 cents and 52 cents respectively. They are scheduled to drop to 5.1 cents and 51 cents on January 1, 2005.

[7] On its Web site (*http://www.energyfuturecoalition.com/about.shtm*), the Coalition describes itself as follows:

> The Energy Future Coalition is a broad-based, nonpartisan alliance that seeks to bridge the differences among business, labor, and environmental groups and identify energy policy options with broad political support. The coalition aims to bring about changes in U.S. energy policy to address the economic, security and environmental challenges related to the production and use of fossil fuels with a compelling new vision of the economic opportunities that will be created by the transition to a new energy economy.

[8] A lengthy article on the report appears under the title of "The Future of Energy Policy" in the

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environmental organizations that commented on this rulemaking serve on the Coalition's Steering Committee or Advisory Council. Among the recommendations contained in the Coalition's report was the one concerning the future of the CAFE incentives for dual fueled vehicles:

> Several million cars and trucks already in the U.S. fleet are fuel-flexible—capable of using gasoline or ethanol interchangeably. Automakers should continue to receive incentives under federal fuel economy standards for the production and sale of these vehicles, and the program should be modified to ensure greater use of alternative fuels, such as high-ethanol blends. (at 22)

VII. Resolution of the "Chicken and Egg" Problem

As noted above, Congress created the CAFE incentive in order to solve what it considered to be a "chicken and egg" problem with the development of a light vehicle transportation system capable of operating on domestically produced alternative fuels. As noted in AMFA's legislative history, Congress sought to address this "problem" by encouraging the development of an infrastructure to support alternative transportation fuels by first promoting the creation of a fleet of vehicles capable of operating on such fuels, then enhancing public awareness and acceptance of such fuels, which in turn would encourage the construction of alternative fuel stations and other infrastructure to support wider use of such fuels.

Congress chose neither to specify a preferred alternative fuel choice nor to impose an absolute timetable for the program to achieve full success. As noted above, the legislative history makes clear that Congress intended to begin the process towards the development of a domestically self-sufficient energy environment through the incentive program. It did not necessarily expect the program to achieve all of its ultimate goals during the first 10 years. Indeed, Congress expressly mandated that the Secretary consider extending the program—albeit on more restricted specified terms—at the end of the first 10 model years and further provided a mechanism for the agency to provide information to Congress from which it could determine whether further legislative action is needed.

In comments submitted in June 2000, as well as those submitted in response to the NPRM, the automobile manufacturers outlined the technical difficulties they initially faced in producing a large volume of alternative fuel vehicles in the early to mid-1990s. Manufacturers' initial efforts focused both on methanol and ethanol fueled vehicles capable of using fuels containing as much as 95 percent alternative fuel. These vehicles were initially provided for fleet applications.

All three major U.S. manufacturers have been producing dual fuel vehicles since 1992, with Ford and General Motors producing those vehicles as early as 1987 and 1988, respectively:

- Starting with the 1987 model year and continuing to the 1989 model year, Ford produced approximately 200 methanol dual fuel Crown Victoria models. These vehicles were used in various public fleet demonstration programs.
- In model year 1991, Ford introduced its methanol dual fuel Taurus, which was produced until model year 1998, the last model year in which Ford produced methanol flexible fuel vehicles (FFVs).
- In model year 1994, Ford added the ethanol dual fuel Taurus, which it continues to produce today. From model year 1999 to model year 2002, Ford produced ethanol dual fueled versions of the Ranger and the Mazda B3000 pickup. In addition, Ford produced an ethanol dual fuel version of its popular Explorer SUV in the 2001 and 2002 model years.
- GM produced test fleets of methanol dual fuel 1988 Corsicas and methanol dual fuel 1991 Luminas. GM redesigned the Lumina for the 1994 model year and did not offer a methanol dual fuel version in 1994 and 1995.
- After the conclusion of its methanol dual fuel test fleet program, GM embarked on a test fleet program for ethanol flexible fuel vehicles, starting with the production of 50 ethanol dual fuel Luminas in model year 1992. These were followed by a production run of 320 ethanol dual fuel Luminas in the 1993 model year.
- Due to technical problems with these vehicles, GM did not produce another ethanol dual fuel vehicle until model year 2000, when the company produced approximately 100,000 ethanol dual fuel S–10s and Sonomas. A similar quantity of these vehicles was produced in model year 2001. Starting with the 2002 model year, GM has been producing full-size pickups and SUVs with 5.3 L V8 ethanol dual fuel engines.
- Chrysler produced 2,500 methanol dual fuel Plymouth Acclaims and Dodge Spirits in the 1992 model year, which were sold to fleets and the public. Chrysler continued offering methanol Acclaims/Spirits until model year 1994, when the company started producing its large passenger cars as methanol dual fuel vehicles.
- Since model year 1999, DaimlerChrysler has mass-produced ethanol dual fuel minivans by equipping these minivans with engines capable of operating on E85.

These early fleet introductions led to the identification of several technological problems with the operation of dual fueled vehicles when using alternative fuels. These included the corrosive nature of the fuels, their effect on engine cylinders, and the need for alcohol compatible materials for fuel lines, hoses, gaskets, valves, fuel pumps, fuel injectors and fuel tanks. Ultimately, these problems were overcome by substituting parts that were more compatible with alcohol-based alternative fuels. With the resolution of these problems, and the movement toward ethanol as the primary source of alternative fuel, the growth of a fleet capable of operating on alternative fuel and the development of an infrastructure to support it began in earnest.

Two main issues eventually led to the discontinuation of methanol flexible fueled vehicle production: (1) Methanol's being more corrosive than ethanol; and (2) the shift in focus by the methanol industry away from providing methanol for M85 to providing methanol for MTBE. Because methanol is more corrosive than ethanol, engineers were faced with challenges more difficult with methanol than those faced with ethanol. The challenges created by ethanol were overcome by 1997, which resulted in a mass influx of E85 vehicles into the market, which continues to this day. These technical solutions enabled E85 vehicles to be mass-produced and reduced their incremental price to such a level that these vehicles are now sold at no additional cost to the consumer. Additionally, methanol producers rapidly altered their focus from developing an M85 infrastructure to providing methanol and MTBE to the refining industry.

Automobile manufacturers have joined with state and local governments and other ethanol supporters to help develop public awareness about E85 and to encourage its use in dual fuel vehicles capable of operating on E85. Other corporations, such as the United Parcel Service, have also embraced alternative fuel vehicles (Fortune Magazine, "Corporate Responsibility: Tree Huggers, Soy Lovers, and Profits," June 23, 2003, noting that the UPS fleet

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July-August issue of Foreign Affairs. The authors are three members of the Coalition's Steering Committee: John Podesta, former chief of staff to former President Clinton, C. Boyden Gray, former counsel to former President G. H. W. Bush, and Timothy Wirth, former U.S. Senator.

includes 1,800 alternative-fuel vehicles and that Federal Express announced plans to convert all its trucks to hybrid electric-diesel engines).

GM has been involved with a variety of efforts focused on promoting the use of E85 in flexible fuel vehicles, including supporting university research and sponsoring programs such as the Ethanol Challenge, an engineering competition focused on E85 vehicles. GM's efforts in the infrastructure area include joint sponsorship with BP Amoco to develop E85 fueling stations and encouraging, through letters and GM's internal website, its employees to refuel their FFVs with E85. GM also provides a list of E85 refueling locations on its GM alternative fuel vehicle Web site, *www.gmaltfuel.com.*

In February 2003, GM announced a new, multi-million dollar campaign to promote the use of corn-based E85 as an alternative to gasoline. As announced, this campaign will be a 2-year partnership with the non-profit National Ethanol Vehicle Coalition (NEVC) and will be focused on increasing ethanol use in flexible fuel vehicles. The ethanol promotion effort will begin in six key states: Missouri, Wisconsin, Colorado, Minnesota, Michigan and Illinois.[9] Methods will include making information available at dealerships and through direct mail, advertising and on-line activities.

Since the early 1990's, Ford has been a contributor to the effort to develop the E85 infrastructure and increase public awareness of the benefits of E85 use. Ford has recently completed an effort to expand the number of E85 stations in the Chicago area, and has initiated the installation of E85 stations in Denver and Milwaukee, which should be completed this summer. Ford also was able to install an E85 station in the Detroit area to service both public and company owned vehicles.

As part of the Minnesota E85 Team, Ford has assisted with the establishment of 30 additional E85 stations in the Minneapolis/St. Paul area. As a result, there are now 62 E85 refueling outlets in Minnesota, which has enabled the use of E85 in the Minneapolis/St. Paul area to grow by 70 percent in recent years. Ford also was an advertising sponsor for the Minnesota Timberwolves NBA team, with an E85 and clean air theme, which included a Taurus FFV as a prize. In recognition of these achievements, the Environmental Protection Agency awarded Ford, as a participant in the Minnesota E85 Team, with its 2002 "Clean Air Excellence Award."

Ford has also been involved in promoting public awareness of E85 and flexible fuel vehicles. In its comments, Ford noted it plans to hand out approximately 50,000 ethanol/FFV brochures at events, include FFV's in its full-line product brochure (approximately 70,000 were distributed last year), and to mail approximately 55,000 CD's containing ethanol and FFV information to interested customers. Ford also committed to continuing the dissemination of information about ethanol and FFV's on its Web site, and promote ethanol and FFV's in their regional merchandising kits and product presentations.

DaimlerChrysler also has been involved in activities to promote the use of E85 in flexible fuel vehicles. DaimlerChrysler distributes the "AFV Quarterly" every three months to 35,000 customers, dealers, corporate executives and alternative fuel vehicle industry personnel. This publication contains articles related to alternative fuels, the company's AFVs and promotes the purchase of AFVs including E85 vehicles. Since 1992, DaimlerChrysler has placed ads in a variety of magazines and publications promoting its AFVs and E85 vehicles.

As set forth in its comments, DaimlerChrysler supports and participates in the DOE Clean Cities program, including membership in many Clean Cities coalitions, and participation in many events, meetings and conferences. DaimlerChrysler also actively sponsors and participates in a multitude of conferences and events designed to promote the use of AFVs, and alternative fuel, including E85.

In addition to corporate activities, the ethanol community and state and local governments are actively encouraging the use of E85 in the alternative fuel fleet. In June 2003, representatives from industry, government and public interest groups announced the launch of a nationwide public education, information and outreach campaign to advance the production and use of renewable ethanol. The program, entitled "Ethanol Across America," is designed to generate awareness and build support for ethanol.

U.S. Senators Conrad Burns (R-Mont.) and Ben Nelson (D-Neb.) will serve as co-chairmen of the new effort, which is directed by the Clean Fuels Foundation, a 501(c)(3) non-profit organization and supported by the U.S. Department of Energy. Ethanol Across America will use a wide range of methods to educate the public, including educational publications, conferences and workshops, consumer brochures (*e.g.*, the Ethanol Fact Book and Flexible Fuel Vehicle Fact Book) and an already-released curriculum guide for a high school course on ethanol. Ethanol Across America also will serve as an information clearinghouse by creating a national services directory database and a national speakers bureau. In addition, the campaign will include a unique nationwide radio component on approximately 400 stations called the 'Ethanol Minute' during which spokespersons from all walks of life, including elected officials, celebrities, energy and environmental experts, will discuss various aspects of ethanol.

Although not yet completed, a light vehicle transportation system capable of incorporating E85 is developing and investment in that system is growing. The March 2002 Report to Congress recommended building on the foundation that has been laid to date by the incentive program. It did not recommend that the incentive be terminated or that the program be halted. To the contrary, it recommended that further efforts be made to enhance the actual use of E85 and to encourage the already occurring investment in order to achieve the ultimate success of more widespread use of alternative fuels.

VIII. Extending the CAFE Incentive

The agency has decided to continue the CAFE incentive program consistent with AMFA and our proposal in the NPRM. Our review of the legislative history has led us to conclude that, when AMFA was enacted in 1988, Congress intended the incentive to be extended if the policy underlying it had begun to work, but the purposes had not yet been fully achieved. That is the situation in which we find the nation as we consider whether to extend the dual fuel vehicle incentive. As AMFA sought, the incentive has led to a growing fleet of dual fuel vehicles, currently more than 3 million strong, capable of using alternative fuels. But, since the development of that fleet occurred only in the late 1990s and early 2000s, an infrastructure for alternative fuel (and particularly for ethanol) has only begun to develop.

Congress gave the agency the authority to extend the CAFE incentive in order to allow the continued development of a dual fuel fleet, an alternative fuel infrastructure, and, ultimately, the implementation of alternative fuels into daily use. Congress itself considered the implications of extending the credits on the overall

[9] Representatives of many of these States (as well as others) expressed their support in the rulemaking record for extending the CAFE incentive to help in their efforts to ensure the continuation of a fleet capable of using E85 and to encourage the use of E85 to service that fleet.

CAFE program, and created the balance it deemed appropriate by limiting the application of the incentive and the terms on which it could be extended.

We do not believe Congress expected the agency to continue the incentive only if the vehicle fleet it created had led to substantial alternative fuel use. If that were the case, the incentive would serve no ongoing purpose, having already achieved its objective, and there would have been no reason for Congress to have placed statutory limits on the time and scope of the extension. Nor do we believe Congress expected the agency to continue the incentive if the automakers had not developed vehicles capable of running on alternative fuels or if no infrastructure seemed likely to develop. Indeed, the legislative history is clear that Congress believed that it was beginning a process toward the use of domestically produced fuel, with the full knowledge that the limited time table set forth in AMFA may not be sufficient to spur the investment into alternative fuels it sought to achieve.

While the infrastructure to support E85 is in its infancy, the availability of approximately 3.4 million vehicles to use that fuel has, as set forth in the comments in this record, provided the necessary encouragement to begin investment in E85 refueling stations. As an example, as of January 19, 2004, there are 182 E85 refueling stations in the country. This includes 56 more stations than existed in March of 2002 when the Report to Congress was completed. Private industry is working with public entities (and, in particular, with state governments) to educate the public about the utility of domestically produced alternative fuels and to encourage consumers to use it. Many commenters argued that were we to discontinue the incentive now, and thereby remove the government's policy support for these efforts, the efforts they are making would likely cease and the gains they have made, and will make, would likely be lost.

The NRDC argued that the agency cannot continue the CAFE incentive without first considering: (1) The availability to the public of alternative fueled automobiles and alternative fuel; (2) energy conservation and security; (3) environmental considerations; and (4) other relevant factors. These are the matters that Congress mandated be considered by the agency when preparing the Report to Congress required by 49 U.S.C. 32905(g).

The NRDC argued that the program has failed in these regards, asserting that dual fuel vehicles do not use alternative fuels, that an extension of the incentive would harm energy conservation and that an extension would have negative environmental effects. The NRDC believes the program should be terminated because, in its view, the primary result of the program to date has been to allow automobile manufacturers the opportunity to enhance their CAFE numbers without yet a corresponding actual reduction in petroleum use. And, to be sure, NHTSA's Report to Congress in March 2002 described the possibility that the AMFA program had, as of that time, resulted in a slight increase in petroleum use (1%) and greenhouse gas emissions (well less than 1%).

However, we note that it is not clear from the statute whether Congress intended the agency to base its administrative decision on the matters required to be considered in the Report to Congress. Had Congress intended that to be the case, it could easily have included those considerations in the statutory provision governing the extension (49 U.S.C. 32905(f)), rather than just the Report to Congress (49 U.S.C. 32905(g)). Nor did Congress specify whether the nation's continuing need to conserve energy and to reduce dependence on foreign oil should militate for or against an extension when, as now, the incentive program established by AMFA has begun to work but not yet achieved its ultimate objective.

As described above, we believe that the most consistent application of Congressional intent is to extend the CAFE incentive contained in AMFA based on data indicating that the program envisioned by Congress has begun but not yet been fully achieved. We believe Congress would not have expected the program to be extended if no fleet of alternative fuel vehicles had arisen or if infrastructure development had yet to begin, nor if the program had been so successful that the acceptance and use of an alternative fuel was self-supporting and needed no further assistance.

Since Congress did not include these criteria in the statutory provision governing the extension, nor provided any guidance on how to apply them, we do not believe that Congress intended there be any legal requirement for the agency to make specific findings with regard to those criteria when considering whether to extend the dual fuel incentive. We believe it more likely that Congress sought information in the Report to Congress from which it could determine whether further legislative action was necessary or desirable. The criteria are accordingly set forth in the statutory section governing the Report to Congress and appropriately provide no guidance as to how or whether to apply the criteria when making preliminary conclusions about whether the incentive should be extended.[10]

While we do not believe there to be any legal requirement that we make findings relating to those criteria before deciding whether to continue the incentive as provided in 49 U.S.C. 32905(f), we do believe those criteria to be relevant to our consideration of an extension. In contrast to the analysis suggested by NRDC and other advocacy groups, we believe that these criteria support further extension of the CAFE incentive for dual fuel vehicles.

First, on March 31, 2003, the agency issued corporate average fuel economy levels for light trucks for model years 2005–2007 (68 FR 16868; April 7, 2003). The agency's analysis concluded that the Nation's continuing need to conserve energy and to enhance energy security justified increased fuel economy levels representing the maximum technologically feasible and economically practicable standards. The public policy needs that led Congress to enact AMFA remains vital today—energy security remains a serious public policy concern. As recent Congressional debate on comprehensive energy legislation has made clear, the development of a light vehicle transportation system based on a domestically produced transportation fuel remains an important energy policy objective. As Congress recognized might be the case, continuation of the AMFA incentive is essential to continue the development of such a system. Without it, the investment already made may be lost and the continuing investment underway may well cease.

The availability of vehicles capable of operating on alternative fuels, and the growing but as yet not commercially developed system to support such a system, argue for (not against) the continuation of the incentive providing the impetus for the development of the vehicle fleet and the infrastructure to support it. The availability of vehicles that can use alternative fuel, and the beginnings of an infrastructure to support it, trumpet the need to continue the incentive to further the fleet and to further spur the implementation of refilling stations and other necessary infrastructure to further use of non-petroleum fuel.

It is worth noting, however, that the Report to Congress described an analysis performed by the

[10] Indeed, subsequent to the submittal of the Report to Congress, both Houses of the Congress passed bills last year that would have extended the dual fuel vehicle incentive.

Environmental Protection Agency (EPA) comparing a baseline case in which no incentive program existed with a case where the incentive program was in place, but in which dual fuel vehicles would use an alternative fuel source only one percent of the time. Not surprisingly, this analysis indicated that when dual fuel vehicles are operated on alternative fuel only 1% of the time, petroleum use would increase slightly because the incentive program would discourage, rather than encourage, the production of more fuel-efficient vehicles. In analyzing the results of the analysis, the Report to Congress stated:

> The results of the analysis indicate that the incentive has resulted in an increase in alternative fuel use (almost all E85), and some slight increase (about one percent) in petroleum consumption and greenhouse gas emissions for 1996 through 2000. The effects beyond 2000 will depend almost entirely on the amount of E85 fuel used by FFVs. Unless actions are taken to significantly expand the availability and use of alternative fuels, the CAFE credit incentive program will not result in any reduced petroleum consumption or greenhouse gas emissions in the future. (at xii)

Rather than argue for termination of the CAFE incentive (as suggested by some commenters), EPA's analysis demonstrates that the real benefits of the CAFE incentive have not yet been realized, and further extension of the CAFE incentive is needed to expand the alternative fuel infrastructure and realize substantial gains in replacement fuel use and petroleum displacement. Only by extending the CAFE incentive can we take full advantage of the existing (and future) investment in the Nation's alternative fuel vehicle fleets and infrastructure. As many commenters have made clear, abandoning that investment today would likely result in the contraction of the dual fuel vehicle fleet, reversal of the upward trend in the construction of refueling stations and reduced public education concerning and acceptance of alternative fuels.

In enacting AMFA, Congress determined that a vehicle fleet capable of operating on alternative fuels was the best approach to encouraging investment in domestic energy sources. As evident in the Report to Congress, the incentive program has resulted in the development of a vehicle fleet, but has only begun to spur the investment necessary for that fleet actually to use alternative fuel. The Report to Congress also emphasizes that increasing the use of domestic alternative fuels in lieu of imported petroleum will have beneficial environmental and energy effects. To abandon the program at this juncture would not allow those benefits to be realized. That is why the Report to Congress concludes that further efforts should be made to encourage the use of alternative fuel, but does not offer a preliminary conclusion suggesting that the program be terminated.

Second, the agency does not agree with the comments of several groups that the CAFE incentive program should be abandoned because manufacturers have used it to enhance their CAFE performance. Several of the advocacy groups claim this has resulted in reducing, rather than enhancing, energy security by permitting the development of a less fuel-efficient vehicle fleet than would have been permitted without the incentive. We believe that argument to be contrary to the policies and objectives underlying the legislative program. Congress specifically decided to use a special dual fuel CAFE calculation to promote the production of dedicated and dual fuel vehicles. To ensure that the incentive is not subsumed within higher CAFE standards, Congress expressly prohibits the agency from acknowledging the incentive when determining maximum feasible average fuel economy levels. Moreover, because Congress recognized that the CAFE incentive could potentially lead to lower overall fleet fuel economy, Congress placed express limitations on the scope of the incentive and the term of any necessary extension specifically to strike the appropriate balance between encouraging alternative fuel system development and providing relief from CAFE obligations.

Third, the view that extension of the CAFE incentive should be premised on the existence of a well-developed alternative fuel infrastructure misinterprets the intent of Congress with respect to the "chicken and egg" problem and its actions to provide the agency with the option to extend the CAFE incentive. Were there a well-developed alternative fuel infrastructure and a corresponding substantial use of alternative fuels, there would be no need for an extension of the CAFE incentive. Similarly, had there been no movement toward a fleet capable of operating on alternative fuels, or no movement toward the growth of infrastructure to that fleet, there would not be any basis for extending the CAFE incentive.

As it is, however, after initially experimenting with methanol and working through technological issues with alternative fuels, in the mid to late 1990s, automobile manufacturers created a fleet of vehicles (as Congress intended) and States and local governments began to encourage investment in infrastructure to support that fleet. As we observed in the NPRM, while no liquid fuel dual-fueled light duty vehicles were produced prior to 1996, approximately 3.4 million dual-fueled light duty vehicles were produced in the 1998 through 2003 model years. Indeed, about one million of these vehicles were produced in the 2003 model year alone. Termination of the incentive now would likely discourage the further growth of the dual fuel vehicle fleet, as well as the further development of the growing infrastructure to support this fleet. This would, in effect, stamp out the gains toward energy security that the CAFE incentive has already produced and will produce in the future. Further, as stated in the Report to Congress, the Nation's long-term energy security must be given considerable weight when balanced against possible short-term petroleum consumption and environmental impacts.

Fourth, commenters who supported the agency's proposal noted that manufacturers would not have developed and produced these dual fuel vehicles in the absence of the incentive. In addition, these commenters indicated the importance of the fact that the dual fuel fleet had only begun to grow in size in recent years, reaching a "critical mass" of vehicles to support investments in alternative fuel infrastructure. In contrast, those commenters opposed to the extension argued that the continued lack of meaningful development of an alternative fuel infrastructure indicated the existence of the dual fuel vehicles themselves has had no impact on demand for alternative fuels. Instead, these commenters, notably Public Citizen, argued that the presence of the growing dual fuel fleet is meaningless if not accompanied by a corresponding growth in demand for alternative fuel. Without such demand, they contend, an alternative fuel infrastructure will not fully develop.

Congress recognized it was unlikely that an alternative fuel vehicle fleet, consumer demand for such vehicles and infrastructure to support such vehicles all would develop contemporaneously. Congress created the incentive in order to spur the necessary investment to create an alternative fuel vehicle fleet, which would drive consumer demand for alternative fuels and, ultimately, the necessary infrastructure to support such demand. Congress further recognized the likelihood that an extension could be necessary to complete the process it had started. Accordingly, the agency does not agree with those commenters that suggest that the credit should be

terminated because consumer demand and infrastructure have not yet developed to an extent that an alternative fuel system is self-sustaining.

Fifth, we believe that the existence of a significant fleet of dual fueled vehicles is meaningful even in the absence of substantial current demand for alternative fuels. Maintaining the CAFE incentive program, and thus continuing to spur the production of dual fuel vehicles, will help attenuate the potential impacts of "oil shocks" caused by rapid changes in the petroleum supply. In the event of an oil shock, dual fuel vehicles could—in those areas where infrastructure is already developed or rapidly expanding—use a domestically produced alternative fuel to reduce the nation's overall petroleum consumption. We do not agree with those commenters who argued that continuing the incentive is unnecessary because manufacturers could reinstitute production of dual fuel vehicles if the need arose, as the technology to build vehicles capable of operating on alternative fuels must be incorporated into the design and manufacture of those vehicles, a process which requires several years lead time.

Sixth, a number of commenters suggested that the supply of ethanol might be a limiting factor in expanding E85 use, the largest component of growth in alternative fuel use. Current U.S. ethanol production is approximately 3.6 billion gallons per year. A substantial percentage of this production capacity is used to produce additives for conventional gasoline or to produce gasohol (90 percent gasoline/10 percent ethanol). Ethanol production capacity has essentially doubled in recent years and, based on the comments showing increased investment in both infrastructure and consumer education, appears likely to continue to grow so that there will be more than enough ethanol to meet the demand for additives and provide E85 fuel. The March 2002 Report to Congress estimated that there were 400 million gallons of ethanol available for use in E85 for the year 2000. By 2002, the amount available for E85 use had grown to slightly over 1 billion gallons.

Recent experience with using ethanol as a replacement for methyl tertiary butyl ether (MTBE) indicates that the ethanol industry has the ability to increase production capacity quite rapidly in response to increased demand. The Report to Congress indicated that if ethanol production remained at a constant rate, production in 2010 would be approximately 2.6 billion gallons per year. However, the California Energy Commission now projects that U.S. ethanol production capacity will exceed 5 billion gallons per year by December 2004[11]. Therefore, the Nation's experience with MTBE's replacement by ethanol has thus far demonstrated that the ethanol industry has the capability to expand production capability rather quickly. The move by some States to phase-out MTBE has also had other salutary effects in terms of improvements in the production, transportation, distribution and blending of ethanol. Therefore, while this MTBE phase-out has significantly increased demand for ethanol, it has also established that ethanol production can be expanded to meet that increased demand.

The existence of the capability to rapidly expand ethanol production underscores the need to have and maintain an ethanol dual fuel vehicle fleet. The presence of an alternative fuel fleet would, in the event of significant changes in the availability of petroleum fuels, provide a ready market for a domestically produced fuel. While the Alliance and Ford both indicated their support for this contention, ACEEE and the NRDC indicated that sudden changes to the petroleum supply might not allow sufficient time for the development of additional ethanol production to allow dual fuel vehicles to use E85 fuel. Rapid changes to ethanol production capacity—*i.e.*, taking less than in six months to a year—are not likely and probably not useful in ameliorating the impact of a sudden oil crisis or "shock." Similarly, if sufficient ethanol production capacity exists in such a situation, or is rapidly developed thereafter, the ethanol produced could be used in an E10 blend as well as E85. However, if restrictions to the petroleum supply persist over a longer term, the ethanol industry's recently demonstrated ability to rapidly expand production indicates that more ethanol could become available. The use of E85 fuels in E85 vehicles is likely to occur simply because much less petroleum would be available. In such an instance, the existence of a dual fuel fleet could be an important asset to the Nation's energy security.

Seventh, we note that the Department of Energy (DOE) has recently published a final rule determining that it is not necessary to require private and local government fleets to acquire alternative fuel vehicles. (69 FR 4219; January 29, 2004). The statutory authority under which DOE issued its final rule specifies that DOE may adopt such a requirement only if it is able to determine that doing so is "necessary" to meet the statutory goal of replacing 30 percent of motor vehicle petroleum use by 2010.

DOE concluded that a private and local government fleet mandate was not necessary because, under current conditions, the limited number of fleets that would be covered and of alternative fuel vehicles that would be acquired under a mandate, coupled with the statutory constraints on such a mandate, would mean that the mandate would not appreciably increase the use of replacement fuels by motor vehicles. DOE also pointed out that even if the number of fleets and acquired alternative fuel vehicles were larger, there was no assurance that acquired vehicles would actually use alternative fuels.

DOE's final rule is consistent with our approach in today's final rule. DOE has merely decided not to impose a mandate on private and local government fleets in the absence of appreciable benefits from such a mandate. Moreover, of course, DOE's action is under a different statute and subject to different statutory requirements than is our rulemaking today. DOE's statute expressly conditions a determination of necessity, and thus the adoption of a mandate, upon that Department's being able to make twin findings: that the 2010 goal of replacement fuel use is not expected to be achieved by voluntary means or pursuant to any law without a mandate, and that that goal is practicable and actually achievable through the adoption of a mandate in combination with voluntary means and any other relevant programs. It would not have been enough for DOE simply to find that a private and local government fleet AFV acquisition mandate would increase the level of alternative or replacement fuel used; rather, in order for a mandate to be promulgated, DOE would have had to find that the 2010 goal actually is achieved "through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs * * *." (42 U.S.C. 13257(e).) In contrast, our decision to extend the incentive is not conditioned upon making any findings. This affords us greater discretion in determining what decision is appropriate.

Eighth, we note that CAS observed that the respective tax treatments of E10 and E85 militate against producers choosing to make E85 instead of E10, stating that E10 blends qualify for a 5.3¢ per gallon exemption from the motor fuel excise tax, which is the equivalent

[11] Schremp, Gordon. "California's Phaseout of MTBE—Background and Current Status" http://www.energy.ca.gov/mtbe/documents/2003-03-17_SCHREMP_AT_EPA.PPT

value of 53¢ per gallon, while the ethanol used in E85 blends qualifies for a 53¢ per gallon tax credit. Gasohol, or E10, benefits from direct reduction of taxation while E85 is subject to the equivalent reduction in taxation through operation of a credit. The two tax treatments are equal in their impact, if not in their operation, and we have no data on which to base a conclusion that the differing approaches to taxing the fuels will affect the production level of either.

Finally, we note that ACEEE indicated that it did not understand how certain dual fuel vehicles, which are required to provide equal or greater energy efficiency when operating on alternative fuel than when using gasoline or diesel fuel, could be classified as such. The agency calculates the relative energy efficiency of a dual fuel vehicle by dividing the vehicle's combined fuel economy (miles/gallon) when operating on gasoline or diesel fuel by the net heating value of the gasoline or diesel fuel (BTU/gallon). We then divide the vehicle's combined fuel economy (miles/gallon) when operating on alternative fuel by the net heating value of the alternative fuel (BTU/gallon). This results in two values, expressed in miles/BTU, which provides the energy efficiency of that vehicle while operating on alternative fuels and the energy efficiency of the vehicle while operating on gasoline or diesel fuel.

The relative energy efficiency of that vehicle can be expressed by a ratio of the energy efficiency of the vehicle while operating on alternative fuels to the energy efficiency of the vehicle while operating on gasoline or diesel fuel. If that ratio, called the energy efficiency ratio, is equal to or greater than one, then that dual fuel vehicle provides equal or greater energy efficiency while operating on the alternative fuel than that vehicle operating on gasoline or diesel fuel. Our review indicates that vehicles currently classified as dual fuel vehicles have, when the method described above is used, energy efficiency ratios indicating that they qualify as dual fuel vehicles.

IX. Conclusion

For the reasons set forth above, we have determined that the extension of the AMFA CAFE incentive program for dual fuel vehicles is necessary to carry out the Congressional aim of encouraging development and use of alternative motor fuels. AMFA envisioned the alternative fuel program as a series of steps: the production of a vehicle fleet capable of operating on alternative fuel that, in turn, would increase consumer demand for alternative fuels to use in those vehicles, which would then spur the growth of infrastructure (such as refueling stations) to support such demand. Combined with a public education and awareness campaign to generate acceptance of alternative fuels as a replacement for conventional fuels, this Congressional program can result in significant economic and energy security benefit as alternative fuel becomes increasingly available and its use gains public acceptance and becomes more widespread.

The extension is consistent with the clear Congressional intent to continue the program if, after a fixed period of time, the CAFE incentive had initially generated some success in the creation of a vehicle fleet, but had not yet resulted in enough infrastructure to create a self-sustaining alternative fuel system. In enacting AMFA, Congress decided to permit a slight short-term reduction in fleet fuel economy in order to encourage long-term energy security through the development of an alternative fuel automobile fleet. The agency has found that the incentive has led to the creation of such a vehicle fleet, and more recently has led to expanded investment in infrastructure and public education campaigns to develop the actual use of alternative fuel in that fleet.

We have determined that extension of the CAFE incentive appropriately balances the Nation's need to continue to encourage investment in alternative fuel infrastructure and the risk that the Nation's alternative fuels system may never become self-sustaining. The recent proliferation of E85 refueling stations, the recent Congressional support for ethanol as an alternative fuel, and the recent expansion of public awareness and acceptance campaigns to encourage ethanol use all imply a continuing increase in E85 use and the ultimate success of the program created by Congress in AMFA, at least as far as ethanol-based fuels are concerned. The current status of the program does not support its abandonment by terminating the CAFE incentive that has sparked its development to date.

X. Regulatory Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is economically significant. While final rule does not require the production of alternative fuel vehicles, it allows manufacturers producing dual-fuel vehicles to produce less efficient conventionally fueled vehicles. The impact of the production of these less efficient vehicles may result in additional annual fuel costs of more than $100 million. Accordingly, it was reviewed under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

Because this final rule is economically significant, the agency has prepared a Final Economic Assessment (FEA), as required by E.O. 12866.[12] Among the estimates and conclusions in the FEA are the following:

- The incentive program has stimulated a significant increase in the availability of dual fuel vehicles (about 3.4 million E85 vehicles were sold through MY 2003, mostly light trucks).
- Even under the most pessimistic assumption regarding the use of E85 fuel (1% usage) in dual fuel vehicles, overall increases in gasoline consumption are relatively small—less that one percent.
- The average consumer cost of adding dual fuel capability to a vehicle is $100 to $200 (in $2000).

[12] As we noted in IX. Conclusion above, we have determined that the extension of the AMFA CAFE incentive program for dual fuel vehicles based on our conclusion that doing so is necessary to carry out the Congressional aim of encouraging development and use of alternative motor fuels. Combined with a public education and awareness campaign to generate acceptance of alternative fuels as a replacement for conventional fuels, this Congressional program can result in significant economic and energy security benefit as alternative fuel becomes increasingly available and its use gains public acceptance and becomes more widespread.

• The ability of GM, Ford and DaimlerChrysler to rely on the incentive credits during the extension will decrease the extent to which those companies would otherwise need to increase the fuel economy of their conventional vehicles, with a resulting average savings, from the manufacturer's perspective, ranging from $34 for MY 2005 light trucks to about $85 for MY 2007 light trucks.

The full FEA is available in the docket and has been placed on the agency's Web site along with the final rule itself.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR 121.105(a) define a small business, in part, as a business entity "which operates primarily within the United States." No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule does not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that there are not currently any small motor vehicle manufacturers in the United States building vehicles that will be affected by the extension of the dual-fuel incentive credit.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has performed an Environmental Assessment and determined that implementation of this final rule will not have a significant impact on the quality of the human environment. Adoption of this final rule could result in increased vehicle emissions and an increase in greenhouse gases, depending on the amount of alternative fuel consumed by dual-fueled vehicles manufactured in response to the rule. Such increases will stem largely from the production of larger, less fuel-efficient vehicles made possible by the extension. However, under any scenario, the amount of increased emissions represents a *de minimis* percentage of overall emissions resulting from the consumption of petroleum fuels by highway vehicles.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The extension of the incentive program through the 2008 model year might result in additional conventional fuel costs for State and local governments. At the same time, extension of the incentive program will ensure that dual fuel vehicles, which State and local governments might need to acquire to comply with other government mandates, will be available at lower costs. Any increased costs that will not be offset by the continued availability of lower cost dual fuel vehicles, however, are not direct costs. The agency's final rule will not otherwise have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This final rule will not have any retroactive effect. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule will not require any new collections of information as defined by the OMB in 5 CFR part 1320. Data regarding production of dual-fuel vehicles will be submitted to the agency under the existing procedures found in 49 CFR part 537.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits,

and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $109 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule is not a Federal mandate; instead, it provides an incentive for automobile manufacturers. Further, the rule is not estimated to result in expenditures by State, local or tribal governments, or by the private sector, of more than $109 million annually.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 538

Energy conservation, Gasoline, Imports, Motor vehicles.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 538 as follows:

PART 538—MANUFACTURING INCENTIVES FOR ALTERNATIVE FUELED VEHICLES

■ 1. The authority citation for part 538 of title 49 continues to read as follows:

Authority: 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.50.

■ 2. Revise § 538.1 to read as follows:

§ 538.1 Scope.

This part establishes minimum driving range criteria to aid in identifying passenger automobiles that are dual-fueled automobiles. It also establishes gallon equivalent measurements for gaseous fuels other than natural gas. This part also extends the dual-fuel incentive program.

■ 3. Revise § 538.2 to read as follows:

§ 538.2 Purpose.

The purpose of this part is to specify one of the criteria in 49 U.S.C. chapter 329 "Automobile Fuel Economy" for identifying dual-fueled passenger automobiles that are manufactured in model years 1993 through 2004. The fuel economy of a qualifying vehicle is calculated in a special manner so as to encourage its production as a way of facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards set forth in part 531 of this chapter. The purpose is also to establish gallon equivalent measurements for gaseous fuels other than natural gas. This part also specifies the model years after 2004 in which the fuel economy of dual-fueled automobiles may be calculated under the special incentive provisions found in 49 U.S.C. 32905(b) and (d).

■ 4. Add § 538.9 to read as follows:

§ 538.9 Dual fuel vehicle incentive.

The application of 49 U.S.C. 32905(b) and (d) to qualifying dual fuel vehicles is extended to the 2005, 2006, 2007, and 2008 model years.

Issued on: February 13, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–3595 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295–3295–01; I.D. 021204B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 Meters) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 interim total allowable catch (TAC) of Pacific cod allocated to these vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 15, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 interim TAC of Pacific cod allocated to catcher vessels 60 feet (18.3 meters) LOA and longer using pot gear in the BSAI was established as a directed fishing allowance of 8,051 metric tons by the interim 2004 harvest specifications for groundfish in the BSAI (68 FR 68265, December 8, 2003). See § § 679.20(c)(2)(ii)(A), 679.20(c)(5), and 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2004 interim TAC of Pacific cod allocated as a directed fishing allowance to catcher vessels 60 feet (18.3 meters) LOA and longer using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 meters) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fishery under the interim 2004 TAC of Pacific cod specified for catcher vessels 60 feet (18.3 meters) LOA and longer using pot gear in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 12, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–3626 Filed 2–13–04; 2:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 021204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 12 hours effective 1200 hrs, Alaska local time (A.l.t.), February 15, 2004, until 2400 hrs, A.l.t., February 15, 2004. This adjustment is necessary to allow the fishing industry opportunity to harvest the 2004 interim total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, A.l.t., February 15, 2004, until 2400 hrs, A.l.t., February 15, 2004. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 1, 2004.

ADDRESSES: Comments on this inseason adjustment may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907-586-7557 or e-mail. The mailbox address for providing e-mail comments is *AKR.eComments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Pollock Re-opening in Statistical Area 630, ID 021204A." Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS issued an inseason adjustment opening directed fishing for pollock in Statistical Area 630 of the GOA for 12 hours effective 1200 hrs, A.l.t, February 4, 2004, until 2400 hrs, A.l.t., February 4, 2004, in accordance with §§ 679.25(a)(1)(I) and 679.25(a)(2)(i)(A)(C), (69 FR 5934, February 9, 2004).

As of February 11, 2004, 2,015 metric tons (mt) of pollock remain in the 2004 interim TAC of the pollock specified for Statistical Area 630 of the GOA. Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component in Statistical Area 630 of the GOA is about 4,000 mt per day. The Administrator, Alaska Region, NMFS, has determined that the 2004 interim TAC of pollock could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, will not allow a 24–hour directed fishery. NMFS, in accordance with §§ 679.25(a)(1)(i) and 679.25(a)(2)(i)(A)(C), is adjusting directed fishery for pollock in Statistical Area 630 of the GOA by opening the fishery at 1200 hrs, A.l.t., February 15, 2004, and closing the fishery at 2400 hrs, A.l.t., February 15, 2004, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the 2004 interim TAC of pollock designated in accordance with the interim 2004 harvest specifications for groundfish in the GOA (68 FR 67964, December 5, 2004) and § 679.20(a)(5)(iii). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., February 15, 2004, after a 12 hour opening is the least restrictive management adjustment to achieve the 2004 interim TAC of pollock in Statistical Area 630 of the GOA. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would prevent the full utilization of the 2004 interim TAC of pollock in Statistical Area 630 of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the 2004 interim TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 1, 2004.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 12, 2004.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–3625 Filed 2–13–04; 2:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 33
Thursday, February 19, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–208–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–200C series airplanes. This proposal would require repetitive inspections of the Station 348.2 frame to detect cracking under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L; and corrective action if necessary. This action is necessary to prevent rapid decompression of the airplane, and possible separation of the forward entry door from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–208–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–208–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of cracks in the Station 348.2 frame on a Boeing Model 737–200C series airplane. The Station 348.2 frame is located immediately aft of the forward entry door cutout. The cracks were located under the door stop fittings at Stringers 15L and 16L. Undetected fatigue cracks in the frame could propagate due to normal cyclic cabin pressure loading. If these fatigue cracks continue to propagate, the stop fittings can become ineffective. This condition, if not corrected, could result in a rapid decompression of the airplane, and possible separation of the forward entry door from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1240, dated April 10, 2003, which describes procedures for performing repetitive detailed and eddy current inspections of the Station 348.2 frame for cracks under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L. (Stringer 14L is similar to Stringers 15L and 16L.) The inspection procedures at these locations consist of: A detailed inspection of the entire area; an eddy current inspection of the forward surface of the Station 348.2 frame inner chord over a 4.0-inch length centered on the removed stop fittings at Stringers 15L and 16L; an eddy current rotary probe inspection of the frame at the fastener holes for the removed stop fittings at Stringers 14L, 15L, and 16L; an eddy current inspection of the intercostal forward flanges common to the aft side of the Station 348.2 frame at Stringers 14L, 15L, and 16L; and an eddy current inspection of the intercostal aft flange common to the forward side of the Station 360 frame at Stringer 15L. The alert service bulletin

also specifies contacting Boeing for repair instructions if cracks are found.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Although the alert service bulletin specifies that operators may contact the manufacturer for disposition of certain cracking conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 78 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,550, or $1,170 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–208–AD.

Applicability: All Model 737–200C series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane, and possible separation of the forward entry door from the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Except as provided by paragraph (b) of this AD: Prior to the accumulation 46,000 total flight cycles, or within 2,250 flight cycles after the effective date of this AD, whichever occurs later, do detailed and eddy current inspections of the Station 348.2 frame for cracking under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L by accomplishing paragraphs 3.A. and 3.B.1. through 3.B.7. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1240, dated April 10, 2003. Do the actions per the service bulletin. Any applicable repair must be accomplished prior to further flight. Repeat the inspections thereafter at intervals not to exceed 4,500 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any crack is found during any inspection required by this AD, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on February 9, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3493 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–237–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require repetitive detailed inspections of the oil in the air turbine starter (ATS) to determine the quantity of the oil and the amount of debris contamination in the oil. If the oil

quantity is incorrect or if excessive debris is found in the oil, this proposal would require replacement of the ATS with a new or serviceable ATS having the same part number, and continued repetitive detailed inspections. This proposal would also require eventual replacement of each ATS with a new improved ATS having a new part number, which would constitute terminating action for the repetitive detailed inspections. This action is necessary to prevent a flash fire in the nacelle, which could cause the engine to shut down in flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–237–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–237–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC reports several cases of failure of the air turbine starter (ATS) unit. The failures resulted from an excessive oil temperature that may have been caused by either insufficient or excessive oil in the ATS. This condition, if not corrected, could result in failure of the ATS, and a possible flash fire in the nacelle and consequent shutdown of an engine in flight.

Explanation of Relevant Service Information

EMBRAER has issued EMBRAER Service Bulletin 145LEG–80–0001, Revision 01, dated April 10, 2003, for Model EMB–135 BJ series airplanes; and EMBRAER Service Bulletin 145–80–0005, Revision 02, dated September 16, 2003, for all other affected airplanes. These service bulletins describe procedures for repetitive detailed inspections of the oil in the ATS to determine the quantity of oil and to determine the amount of debris contamination in the oil. For any ATS that has an incorrect quantity of oil or excessive debris contamination in the oil, these service bulletins describe procedures for replacement of the ATS with a new or serviceable ATS having the same part number.

EMBRAER has also issued EMBRAER Service Bulletin 145–LEG–80–0002, dated October 2, 2003, for Model EMB–135 BJ series airplanes; and EMBRAER Service Bulletin 145–80–0006, dated October 2, 2003, for all other affected airplanes. These service bulletins describe procedures for rework of each ATS.

Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2003–07–01R1, dated December 23, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletins 145–LEG–80–0002 and 145–80–0006 refer to Honeywell Service Bulletin 3505910–80–1789, dated August 19, 2003 as an additional source of service information for accomplishment of the replacement of the ATS with a new improved ATS.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Proposed Rule, the Brazilian AD, and the Service Bulletins

Operators should note that although Brazilian Airworthiness Directive 2003–07–01R1 and the service bulletins allow for replacement of the ATS with the same part number at intervals of up to 50 flight hours, or continued operation of an ATS with excessive debris and fewer than 400 operating hours, this proposed AD would require the replacement prior to further flight.

Operators should also note that although the Honeywell service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Cost Impact

The FAA estimates that 459 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $29,835, or $65 per airplane, per inspection cycle.

We estimate that it would take approximately 2 work hours per airplane to accomplish the proposed replacement with a new, improved ATS, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $59,670, or $130 per airplane. The manufacturer may cover the cost of replacement parts associated with this proposed replacement, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed replacement.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–237–AD.

Applicability: Model EMB–135 and –145 series airplanes, with air turbine starter (ATS) units having part numbers (P/N) 3505910–4 or –5; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a flash fire in the nacelle, which could cause the engine to shut down in flight, accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For the detailed inspection and replacements specified in paragraphs (b), (c) and (d) of this AD: For Model EMB–135 BJ series airplanes, EMBRAER Service Bulletin 145LEG–80–0001, Revision 01, dated April 10, 2003; and for all other affected airplanes, EMBRAER Service Bulletin 145–80–0005, Revision 02, dated September 16, 2003.

(2) For the replacement specified in paragraph (e) of this AD: For Model EMB–135 BJ series airplanes, EMBRAER Service Bulletin 145–LEG–80–0002, dated October 2, 2003; and for all other affected airplanes, EMBRAER Service Bulletin 145–80–0006, dated October 2, 2003.

Note 1: These service bulletins refer to Honeywell Service Bulletin 3505910–80–1789, dated August 19, 2003, as an additional source of service information. The Honeywell service bulletin is attached to the EMBRAER service bulletins. Although this Honeywell service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Repetitive Detailed Inspection

(b) Within 200 flight hours or 90 days after the effective date of this AD, whichever occurs first: Perform a detailed inspection of the oil in the air turbine starter (ATS) to determine the quantity of oil and to determine the amount of debris contamination in the oil in accordance with the applicable service bulletin. Repeat the inspection at intervals not to exceed 500 flight hours or 180 days, whichever occurs first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Oil Replacement if Oil Quantity Is Correct and No Excessive Debris Is Found

(c) If, during the inspection required by paragraph (b) of this AD, no oil debris contamination is found that is in excess of the limits allowed by the applicable service bulletin; and if the amount of oil in the ATS is correct: Prior to further flight, replace the oil in the ATS with new oil, in accordance with the applicable service bulletin.

Replacement if Oil Quantity Is Incorrect or if Excessive Debris Is Found

(d) If, during the inspection required by paragraph (b) of this AD, the oil quantity is found to be incorrect; or if oil debris contamination is found that is in excess of

the limits allowed by the applicable service bulletin: Prior to further flight, replace the ATS with a new or serviceable ATS having part number (P/N) 3505910–4 or P/N 3505910–5, in accordance with the applicable service bulletin. Where the service bulletins allow for continued operation of an ATS with excess debris and fewer than 400 operating hours, or replacement within 50 flight hours, replace the ATS prior to further flight.

Terminating Action

(e) Within 26 months after the effective date of this AD, replace any ATS having P/N 3505910–4 or –5 with a new ATS having P/N 3505910–6 in accordance with the applicable service bulletin. This replacement constitutes terminating action for the repetitive detailed inspections required by paragraph (b) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin 145–80–0005

(f) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–80–0005, Revision 01, dated April 10, 2003, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2003–07–01R1, dated December 23, 2003.

Issued in Renton, Washington, on February 9, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3494 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, and TH–55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) for Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters. That AD currently requires inspecting the lugs on certain aft cluster fittings and each aluminum end fitting on certain tailboom struts. Modifying or replacing each strut assembly within a specified time period and serializing certain strut assemblies is also required. Additionally, a one-time inspection and repair, if necessary, of certain additional cluster fittings, and replacement and modification of certain cluster fittings within 150 hours time-in-service (TIS) or 6 months, whichever occurs first, is required. This action would require the same actions as the existing AD, but would revise the Applicability section of the AD. This proposal is prompted by the discovery of an error in the Applicability section of the existing AD. The actions specified by the proposed AD are intended to prevent failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

DATES: Comments must be received by April 19, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256–7525, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–25–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On June 24, 2003, the FAA issued AD 2003–13–15, Amendment 39–13217 (68 FR 40478, July 8, 2003), to require owners and operators of the affected helicopters to:

- Within 10 hours TIS and thereafter at intervals not to exceed 50 hours TIS, dye-penetrant inspect the lugs and replace any cracked cluster fitting;
- Within 150 hours TIS or 6 months, whichever occurs first, replace or modify, using kit, part number (P/N) SA–269K–106–1, each cluster fitting, P/N 269A2234 and P/N 269A2235;
- For strut assemblies, P/N 269A2015 or P/N 269A2015–5, at intervals not to exceed 50 hours TIS, visually inspect the strut aluminum end fittings for deformation or damage, dye-penetrant inspect the strut aluminum end fittings for a crack, and replace deformed, damaged, or cracked parts. Within 500 hours TIS or one year, whichever occurs first, modify or replace certain part-numbered strut assemblies;
- Within 100 hours TIS, for Model 269C helicopters, serialize each strut assembly, P/N 269A2015–5 and 269A2015–11;
- Within 25 hours TIS or 60 days, whichever occurs first, inspect and repair cluster fittings, P/N 269A2234–3 and P/N 269A2235–3; and
- Before further flight, replace any cluster fitting that is cracked or has a surface defect beyond rework limits.

That action was prompted by the need to expand the applicability to include certain Hughes-manufactured cluster fittings and to provide a terminating action for the repetitive dye-penetrant inspections of the cluster fittings. That condition, if not corrected, could result

in failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

Since issuing that AD, we have discovered an error in the Applicability section that should be changed. The AD currently excepts helicopters that have Hughes-manufactured cluster fittings installed and that were originally sold by Hughes after June 1, 1988. We intended that this exception apply to all cluster fittings, P/N 269A2234–3 or P/N 269A2235–3, that are installed, regardless of the manufacturer, if there was written documentation in the aircraft or manufacturer's records that shows the cluster fitting was originally sold by the manufacturer after June 1, 1988. Therefore, we are now proposing to expand the exception to all cluster fittings originally sold after June 1, 1988, regardless of the manufacturer.

The previously described unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would revise AD 2003–13–15 to retain the current requirements but revise the Applicability to exclude all cluster fittings with appropriate written documentation showing that the cluster fitting was originally sold by the manufacturer after June 1, 1988.

The FAA estimates that 1,000 helicopters of U.S. registry would be affected by the proposed AD. It would take approximately 2.5 work hours for each dye-penetrant inspection, 12 work hours to replace one cluster fitting, 4 work hours to modify or replace the strut assembly, 0.25 work hours to serialize the strut assembly, and 16 work hours to modify a cluster fitting. The average labor rate is $65 per work hour. Required parts would cost approximately $5 for each fitting inspection, $1,635 to replace a cluster fitting, $1,500 to modify or replace the strut assembly, and $1,688 for each cluster fitting modification kit (2 cluster fittings). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,369,248 (assuming 2,000 cluster fittings are inspected, 50 cluster fittings are replaced, 6 strut assemblies are modified or replaced, 6 strut assemblies are serialized, and 1,010 cluster fittings are modified).

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–13217 (68 FR 40478, July 8, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Schweizer Aircraft Corporation: Docket No. 2002–SW–25–AD. Revises AD 2003–13–15, Amendment 39–13217.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, certificated in any category, with a tailboom support strut (strut) assembly, part number (P/N) 269A2015 or 269A2015–5; or with a center frame aft cluster fitting, P/N 269A2234 or 269A2235, and an aft cluster fitting listed in the following table:

Helicopter model number	Helicopter serial number	With aft cluster fitting, P/N
Model 269C	0570 through 1165	269A2234–3.
Model 269C	0500 through 1165	269A2235–3.
Model 269A, A–1, B, or C, or TH–55A	All	269A2234–3 or 269A2235–3.

Exception: For the Model 269A, A–1, B, or C or TH–55A helicopters with cluster fittings, P/N 269A2234–3 or P/N 269A2235–3, installed, if there is written documentation in the aircraft or manufacturer's records that shows the cluster fitting was originally sold by the manufacturer after June 1, 1988, the requirements of this AD are not applicable.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a tailboom support strut or lug on a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS, for helicopters with cluster fittings, P/N 269A2234 or P/N 269A2235:

(1) Using paint remover, remove paint from the lugs on each cluster fitting. Wash with water and dry. The tailboom support strut must be removed prior to the paint stripping.

(2) Dye-penetrant inspect the lugs on each cluster fitting. See the following Figure 1:

BILLING CODE: 4910–13–P

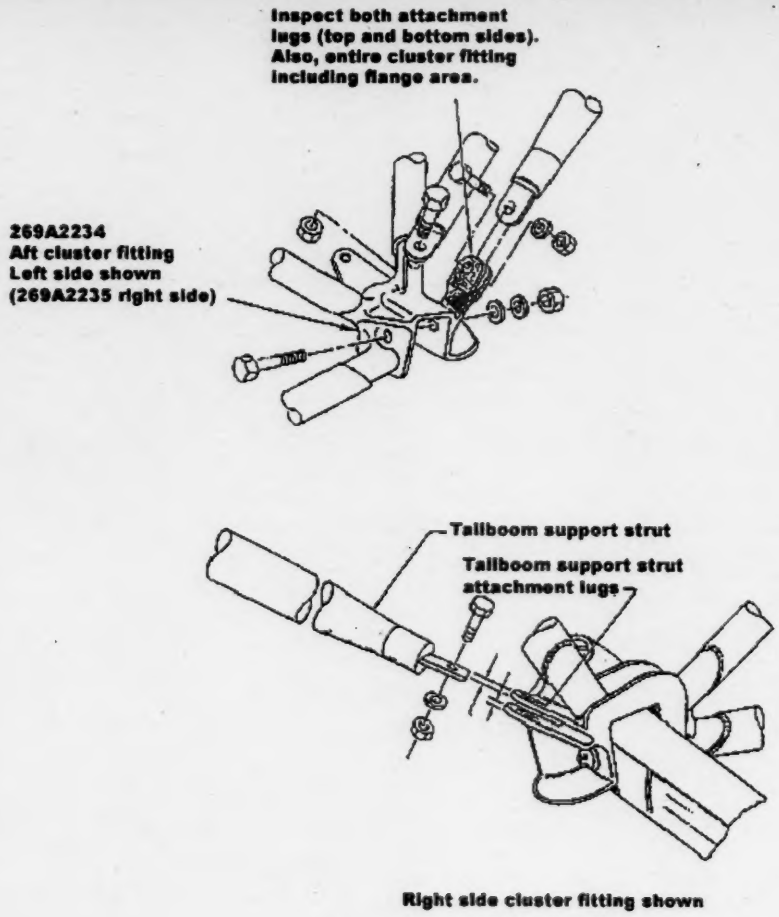

Figure 1

BILLING CODE: 4910–13–C

(3) If a crack is found, before further flight, replace the cracked cluster fitting with an airworthy cluster fitting.

(b) Cluster fittings, P/N 269A2234 and P/N 269A2235, that have NOT been modified with Kit P/N SA–269K–106–1, are NOT eligible replacement parts.

(c) Within 150 hours TIS or 6 months, whichever occurs first, replace each cluster fitting, P/N 269A2234 and P/N 269A2235, with an airworthy cluster fitting or modify each cluster fitting, P/N 269A2234 and P/N 269A2235, with Kit, P/N SA–269K–106–1. Installing the kit is terminating action for the 50-hour TIS repetitive dye-penetrant inspection for these cluster fittings. Broken or cracked cluster fittings are not eligible for the kit modification.

(d) For helicopters with strut assemblies, P/N 269A2015 or 269A2015–5, accomplish the following:

(1) At intervals not to exceed 50 hours TIS:

(i) Remove the strut assemblies, P/N 269A2015 or P/N 269A2015–5.

(ii) Visually inspect the strut aluminum end fittings for deformation or damage and dye-penetrant inspect the strut aluminum end fittings for a crack in accordance with Step II of Schweizer Service Information Notice No. N–109.2, dated September 1, 1976 (SIN N–109.2).

(iii) If deformation, damage, or a crack is found, before further flight, modify the strut assemblies by replacing the aluminum end fittings with stainless steel end fittings, P/N 269A2017–3 and -5, and attach bolts in accordance with Step III of SIN N–109.2; or replace each strut assembly P/N 269A2015 with P/N 269A2015–9, and replace each strut assembly P/N 269A2015–5 with P/N 269A2015–11.

(2) Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies in accordance with paragraph (d)(1)(iii) of this AD.

(e) For the Model 269C helicopters, within 100 hours TIS, serialize each strut assembly, P/N 269A2015–5 and P/N 269A2015–11, in accordance with Schweizer Service Information Notice No. N–108, dated May 21, 1973.

(f) Within 25 hours TIS or 60 days, whichever occurs first, for cluster fittings, P/N 269A2234–3 and P/N 269A2235–3, perform a one-time inspection and repair, if required, in accordance with Procedures, Part II of Schweizer Service Bulletin No. B–277, dated January 25, 2002.

(g) Before further flight, replace any cluster fitting that is cracked or has surface defects

beyond rework limits with an airworthy cluster fitting.

(h) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, New York Aircraft Certification Office (NYACO), Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on February 9, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–3495 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16861; Airspace Docket No. 04–ASO–1]

Proposed Amendment of Class D and E Airspace; Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D and E4 airspace at Homestead, FL. The name of the airport has changed from Dade County—Homestead Regional Airport to Homestead ARB. As a result of an evaluation, it has been determined a modification should be made to the Homestead, FL Class D and E4 airspace areas to contain the Tactical Air Navigation (TACAN) or Instrument Landing System (ILS) Runway (RWY) 5, Standard Instrument Approach Procedure (SIAP) to Homestead ARB. Additional surface area airspace is needed to contain the SIAP.

DATES: Comments must be received on or before March 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16861/Airspace Docket No. 04–ASO–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposals. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–16861/Airspace Docket No. 04–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D and E4 airspace at Homestead, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace designated as surface areas are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Homestead, FL [REVISED]

Homestead ARB, FL
(Lat. 25°29′19″ N., long. 80°23′01″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.5—mile radius of Homestead ARB.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ASO FL E4 Homestead, FL [REVISED]

Homestead ARB, FL
(Lat. 25°29′19″ N., long. 80°23′01″ W.)

That airspace extending upward from the surface within 1.5 miles each side of the 50° bearing and the 230° bearing from Homestead ARB extending from the 5.5—mile radius to 7 miles northeast and southwest of the airport.

* * * * *

Issued in College Park, Georgia, January 27, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–3629 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16919; Airspace Docket No. 04–ASO–3]

Proposed Establishment of Class D and E Airspace, Proposed Amendment of Class E Airspace; New Smyrna Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace and amend Class E5 airspace at New Smyrna Beach, FL. A federal contract tower with a weather reporting system is being constructed at the New Smyrna Beach Municipal Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface, to but not including 1,200 feet MSL, within a 3.2-mile radius of the New Smyrna Beach Municipal Airport and a Class E4 airspace extension that is 5 miles wide and extends 7 miles southeast of the airport. A regional evaluation has determined the existing Class E5 airspace area should be amended to contain the Nondirectional Radio Beacon (NDB) Or Global Positioning System (GPS) runway (RWY) 29 SIAP. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) needed to contain the SIAP will increase from a 6.5-mile radius of the airport to a 6.6-mile radius of the airport and provide for the procedure turn area.

DATES: Comments must be received on or before March 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16919/ Airspace Docket No. 04–ASO–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–16919/Airspace Docket No. 04–ASO–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No.

11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace and Class E4 airspace and amend Class E5 airspace at New Smyrna Beach, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth, Class E airspace designations for airspace areas designated as an extension to a Class D airspace area and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6004 and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D New Smyrna Beach, FL [New]

New Smyrna Beach Municipal Airport, FL
(Lat. 29°03′21″ N., long. 80°56′54″ W.)

That airspace extending upward from the surface, to but not including 1,200 feet MSL, within a 3.2—mile radius of New Smyrna Beach Municipal Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO FL E4 New Smyrna Beach, FL [New]

New Smyrna Beach Municipal Airport, FL
(Lat. 29°03′21″ N., long. 80°56′54″ W.)
New Smyrna Beach NDB, FL
(Lat. 29°03′16″ N., long. 80°56′28″ W.)

That airspace extending upward from the surface within 2.5 miles each side of the New Smyrna Beach NDB 124° bearing, extending from the 3.2—mile radius to 7 miles southeast of the NDB. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO FL E5 New Smyrna Beach, FL [Revised]

New Smyrna Beach Municipal Airport, FL
(Lat. 29°03′21″ N., long. 80°56′54″ W.)
Massey Ranch Airpark Airport
(Lat. 28°58′44″ N., long. 80°55′30″ W.)
New Smyrna Beach NDB, FL
(Lat. 29°03′16″ N., long. 80°56′28″ W).

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of New Smyrna Beach Municipal Airport and within 4 miles northeast and 8 miles southwest of the 124° bearing from the New Smyrna Beach NDB extending from the 6.6-mile radius of 16 miles southeast of the airport and within a 6.5-mile radius of Massey Ranch Airpark Airport.

* * * * *

Issued in College Park, Georgia, on January 27, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–3630 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16983; Airspace Docket No. 04–ACE–1]

Proposed Establishment of Class E2 Airspace; Farmington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Farmington, MO. It also proposes to modify the Class E5 airspace at Farmington, MO.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 23, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16983/ Airspace Docket No. 04–ACE–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–16983/Airspace Docket No. 04–ACE–1." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Farmington, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with St. Louis Automated Flight Service Station.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Farmington, MO. An examination of this Class E airspace area for Farmington, MO revealed discrepancies in the Farmington Regional Airport airport reference point. This proposal would correct these discrepancies. The areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Farmington, MO

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Perrine NDB
(Lat. 37°45′54″ N., long. 90°25′45″ W.)

Within a 3.9-mile radius of Farmington Regional Airport and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 3.9-mile radius of the airport to 7 miles northeast of the NDB and within 2.6 miles each side of the 191° bearing from the Perrine NDB extending from the 3.9-mile radius of the airport to 7 miles south of the NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Farmington, MO

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Farmington VORTAC
(Lat. 37°40′24″ N., long. 90°14′03″ W.)
Perrine NDB
(Lat. 37°45′54″ N., long. 90°25′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4-mile radius to 7.9 miles northeast of the airport and within 2.6 miles each side of the 191° bearing from the Perrine NDB, extending from the 6.4-mile radius to 7.9 miles south of the airport and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius of the airport to the VORTAC.

* * * * *

Issued in Kansas City, MO, on February 3, 2004.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–3632 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD11–04–001]

RIN 1625–AA11

Regulated Navigation Area; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and Connecting Waters, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area for the purpose of limiting the amount of time vessels carrying liquefied hazardous gas ("LHG") may remain within these waters. This regulation would protect the public and ports within the heavily populated San Francisco Bay area by reducing the chances that vessels carrying LHG are either subject to a terrorist attack or involved in an accident within these waters. Vessels carrying LHG would not be allowed to anchor in the San Francisco Bay area and would be required to proceed directly to their intended offload facility.

DATES: Comments and related material must reach the Coast Guard on or before April 19, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11–04–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The Threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 attack against a tank vessel off the coast of Yemen. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002).

Additionally, the U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Moreover, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to deter threats to the port while sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic through ports, harbors, or other waters.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of regulated navigation areas, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish regulated navigation areas pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular proposed rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist incident involving vessels carrying liquefied hazardous gas (LHG), the Coast Guard is proposing to designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area for the purpose of prohibiting vessels carrying LHG from anchoring or unnecessarily remaining within these areas. Since September of 2001, as part of the efforts to increase the safety and security of the Port of San Francisco Bay, the Captain of the Port (COTP) has been issuing COTP Orders to prohibit LHG carrying vessels from anchoring prior to discharging their cargo. As such, this proposed rule would codify the

established policy of prohibiting LHG carrying vessels from anchoring in San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters.

Discussion of Proposed Rule

The proposed rule would designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area. "Liquefied hazardous gas (LHG)" is defined as a liquid containing one or more of the products listed in Table 127.005 of Title 33 of the Code of Federal Regulations that is carried in bulk on board a tank vessel as a liquefied gas product. The hazards associated with these products include toxic or flammable properties or a combination of both.

This proposed rule is needed for national security reasons to protect the public, the port, and the environment from potential subversive acts, accidents or other events of a similar nature. Prohibiting LHG vessels from anchoring would limit the amount of time these vessels are underway in the San Francisco Bay area and would reduce the associated potential hazards posed by their cargo. Deviations from this rule will be prohibited unless specifically authorized by the Captain of the Port or his designated representative.

Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the rule described herein, would be punishable by civil penalties (where each day of a continuing violation is a separate violation), criminal penalties (including imprisonment up to 6 years) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation would also face imprisonment up to 12 years. Vessels or persons violating this section would also be subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce this regulation and could enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation would not be significant because vessels carrying LHG have been directed by COTP orders not to anchor within San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California since September of 2001. Therefore, this proposed rule would be a continuation of the established policy of prohibiting LHG vessels from anchoring in the San Francisco Bay area, and having it published would simply remove the need to issue a COTP order each time an LHG vessel enters the bay. In addition, LHG vessels may be allowed to anchor on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would only effect LHG vessels within San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California, it would still allow these vessels to complete their intended purpose of delivering LHG cargo, and the rule would be a continuation of a policy that has been in effect since September of 2001.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule would not be an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we would be establishing a Regulated Navigation Area.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1185, to read as follows:

§ 165.1185 Regulated Navigation Area; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California.

(a) *Location.* All waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California are a Regulated Navigation Area.

(b) *Definition. Liquefied hazardous gas (LHG)* means a liquid containing one or more of the products listed in Table 127.005 of 33 CFR 127.005 that is carried in bulk on board a tank vessel as a liquefied gas product.

(c) *Regulations.* All vessels loaded with a cargo of liquefied hazardous gas (LHG) within the Regulated Navigation Area established by this section must proceed directly to their intended cargo reception facility to discharge their LHG cargo, unless:

(1) The vessel is otherwise directed or permitted by the Captain of the Port. The Captain of the Port can be reached at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative; or,

(2) The vessel is in an emergency situation and unable to proceed as directed in paragraph (a) of this section without endangering the safety of persons, property, or the environment.

Dated: January 29, 2004.

Kevin J. Eldridge,

Rear Admiral, U.S. Coast Guard, District Commander, Eleventh Coast Guard District.

[FR Doc. 04–3596 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D 020904A]

RIN 0648–AR69

Sea Turtle Conservation; Public Hearing Notification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold a public hearing to inform interested parties of the proposed prohibitions and restrictions on Virginia pound net leaders and to accept public comments on this action.

DATES: NMFS will hold a public hearing at the Holiday Inn SunSpree Resort - Virginia Beach, on Thursday, February 19, 2004, at 7 p.m., eastern daylight time.

ADDRESSES: The Holiday Inn SunSpree Resort - Virginia Beach is located at 3900 Atlantic Avenue, at the corner of Atlantic Avenue and 39th Street, Virginia Beach, VA 23451 (ph. 757–428–1711). The public hearing will take place in the Cape Henry Room.

FOR FURTHER INFORMATION CONTACT: Carrie Upite (ph. 978–281–9328 x6525), NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on February 6, 2004 (69 FR 5810), which proposes to prohibit the use of all pound net leaders from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64) and the York River downstream of the Coleman Memorial Bridge (Route

17). Additionally, the rule proposes to prohibit the use of all leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) and leaders with stringers from May 6 to July 15 each year in the Virginia waters of the Chesapeake Bay outside the aforementioned closed area, extending to the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3), and from the Chesapeake Bay Bridge Tunnel to the COLREGS line at the mouth of the Chesapeake Bay. Additional information on the justification for this action can be found in that proposed rule.

NMFS recognizes the need and importance to obtain public comment on the proposed action. In addition to the February 19 meeting announced in this notice, NMFS is accepting written comments on the proposed action. Written comments on the proposed rule or requests for copies of the literature cited, the draft Environmental Assessment, or Regulatory Impact Review and Initial Regulatory Flexibility Analysis should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978–281–9394. Comments will not be accepted if submitted via e-mail or the Internet. The public comment period closes at 5 p.m., eastern daylight time, on March 8, 2004.

In preparing the final rule for this action, NMFS will fully consider the public comments received during the 30–day comment period (either in writing or verbally during the public hearing).

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Upite, telephone 978–281–3928 x6525, fax 978–281–9394, at least 5 days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 12, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–3638 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 33
Thursday, February 19, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, January 8, 2004, in Susanville, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The meeting begins at 9 a.m., at the Forest Supervisor's Office, 2550 Riverside Drive, Susanville, CA 96130. The meeting objectives are for RAC members and the public to hear project presentations from proponents. Agenda topics will include: Presentations of four proposed projects, continuation of selection of projects, develop February meeting agenda, and meeting calendar for 2004. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: contact Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Jack T. Walton,

Acting Forest Supervisor.

[FR Doc. 04–3490 Filed 2–18–04; 8:45 am]

BILLING CODE 3910–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Financing for Household Water Well Systems

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of inquiry; technical correction.

SUMMARY: The Water and Environmental Program within the Rural Utilities Service (RUS) published in the **Federal Register** on February 10, 2004, a notice of inquiry seeking written comments about the prospective grant program to an entity that will establish a lending program for the construction, refurbishing, and servicing of individually-owned household water well systems in rural areas that are or will be owned by the eligible individuals. Inadvertently the amount of funding available for fiscal year 2004 was incorrect.

DATES: Effective on February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Morgan, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., stop 1548 room 5145–S, Washington, DC 20250–1548. Phone: 202–690–2670. Fax: 202–720–0718. E-mail: *gary.morgan@usda.gov.*

SUPPLEMENTARY INFORMATION: The Water and Environmental Program within the Rural Utilities Service (RUS) published a document in the **Federal Register** on February 10, 2004 (69 FR 6251) to seek written comments about the prospective grant program to an entity that will establish a lending program for the construction, refurbishing, and servicing of individually-owned household water well systems in rural areas that are or will be owned by the eligible individuals. Inadvertently, the amount of funding available for fiscal year 2004 was incorrect. In the notice published on February 10, 2004 (69 FR 6251) make the following correction. On page 6251, in the second column, in the seventh paragraph of the "Background" section, change the amount "$500,000" to "1,000,000."

Dated: February 12, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–3531 Filed 2–18–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: Information and Communication Technology Survey (ICTS).

Form Number(s): ICT–1(S), ICT–1(M), and ICT–1(L).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 74,900 hours.

Number of Respondents: 46,000.

Avg Hours Per Response: 1 hour and 38 minutes.

Needs and Uses: For several years, economic data users and policymakers have been concerned about the lack of available data related to e-business infrastructure investment. Such data are critical for evaluating productivity growth, changes in industrial capacity, measures of economic performance, and current economic developments. Rapid changes and advances in Information and Communication Technology (ICT) equipment have resulted in these assets having short useful lives and a tendency to be replaced much quicker than other types of equipment. Companies are expensing the full cost of such assets during the current annual period rather than capitalizing the value of such assets and expensing the cost over two or more years. In some cases this is due to the short useful life of the asset, and in other cases this is because companies have varying dollar levels for capitalization.

The Annual Capital Expenditures Survey (ACES) (OMB # 0607–0782) currently collects annual data on business capital expenditures and detailed types of structures and equipment data every five years with the next such collection in the 2003 ACES. This infrequent collection of types of structures and equipment detail

and the fact that the ACES does not include non-capitalized expenditures for e-business infrastructure investment creates serious data gaps.

As a result of the data gaps cited above, we are requesting approval to conduct the Information and Communication Technology Survey (ICTS) as a supplement to the ACES. For the ICTS, we plan to use the ACES sampling, follow-up and estimation methodologies including mailing to the same employer companies as the ACES. This data collection will supplement the current source of comprehensive statistics on business investment in equipment and software for private nonfarm businesses in the United States.

The proposed ICTS will annually collect industry-level data for two categories of non-capitalized expenses (purchases, and operating leases and rental payments) for four types of ICT equipment and software (computers and peripheral equipment; ICT equipment, excluding computers and peripherals; electromedical and electrotherapeutic apparatus; and, computer software, including payroll associated with software development). This collection will represent non-capitalized expenditure activity of all employer firms and provide comprehensive control estimates of total non-capitalized expense for each type of equipment and software by industry.

The ICT survey will be an important part of the Federal Government statistical program to improve and supplement ongoing statistical programs. The BEA will use this data to refine annual estimates of investment in equipment and software in the national income and product accounts and to improve estimates of capital stocks. The Bureau of Labor Statistics (BLS) will use the data to improve estimates of capital stocks for productivity analysis. The Federal Reserve Board (FRB) will use the data to improve estimates of investment indicators for monetary policy.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, & 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: February 12, 2004.

Madeleine Clayton,

Office of the Chief Information Officer.

[FR Doc. 04–3533 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE II (Mandatory and Voluntary Surveys)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 19, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 763–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233 (or via the Internet at *judy.m.dodds@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annual "counterpart" collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." One wave is resubmitted for clearance each year. Mandatory and voluntary surveys historically have been divided into separate clearance requests, making two separate clearance requests each year and six clearance requests in total for the CIR program. We are now combining the mandatory and voluntary surveys of each wave into one clearance request, reducing the total number of clearance requests from six to three, and the number of OMB submissions annually from two to one. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave II for clearance. The surveys in Wave II are:

Mandatory surveys	Voluntary survey
M311J–Oilseeds, Beans and Nuts (Primary Producers)	*M327G–Glass Containers.
M313N–Cotton in Public Storage	*M331J–Inventories of Steel Producing Mills.
M313P–Consumption on the Cotton System and Stocks	*MQ311A–Flour Milling Products.
MQ314X–Bed and Bath Furnishings	*MQ325A–Inorganic Chemicals.

Mandatory surveys	Voluntary survey
MQ315A–Apparel	*MQ325C–Industrial Gases
MQ333W–Metalworking Machinery	MQ325F–Paint, Varnish, and Lacquer.
MA313F–Yarn Production	MQ335C–Fluorescent Lamp Ballasts.
MA313K–Knit Fabric Production	
MA314Q–Carpet and Rugs	
MA316A–Footwear	
MA321T–Lumber Production and Mill Stocks	
MA325G–Pharmaceutical Preparations, except Biologicals	
MA333L–Internal Combustion Engines	
MA333P–Pumps and Compressors	
MA334M–Consumer Electronics	
MA334Q–Semiconductor, Printed Circuit Boards, and Electronic Components	
MA334S–Electromedical Irradiation Equipment	
MA335E–Electric Housewares and Fans	
MA335J–Insulated Wire and Cable	

*These voluntary surveys have mandatory annual counterparts.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0395—Mandatory Surveys. 0607–0206—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, or other for-profit organizations.

Estimated Number of Respondents: 11,408.

Estimated Time Per Response: 1.2745.

Estimated Total Annual Burden: 14,540 hours.

Estimated Total Annual Cost: The estimated cost to respondents for all the CIR reports in Wave II for fiscal year 2005 is $238,601.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 12, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–3534 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2004]

Foreign-Trade Zone 193—Pinellas County, Florida; Expansion of Manufacturing Authority—Subzone 193A, Cardinal Health 409, Inc. (Gelatin Capsules/Pharmaceutical Products), Pinellas County, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 193A, at the Cardinal Health 409, Inc. (formerly R.P. Scherer Corporation) facilities in the St. Petersburg/Clearwater area (Pinellas County), Florida. It was formally filed on February 10, 2004.

Subzone 193A was approved by the Board in 2000 at 4 sites (42.1 acres) in the St. Petersburg/Clearwater area (Pinellas County), with authority granted for the manufacture of soft gelatin capsules and certain pharmaceutical products (Board Order 1117, 65 FR 54196, 9/7/2000). The scope of authority under zone procedures at Subzone 193A was recently expanded (Board Order 1282, 68 FR 53344, 9/10/03).

Subzone 193A (754 employees) is currently requesting to further expand the scope of authority for manufacturing activity conducted under FTZ procedures to include a broad range of inputs and pharmaceutical and nutritional final products. Categories of inputs include edible products of animal origin, dried vegetables, alfalfa, vegetable saps and pectins, various seed (including soybean oil), nut and vegetable oils, margarine, animal fats or oils, liver extract, food preparations, protein concentrates, chromium and manganese oxides, sulfates, phosphates, silicates, salts of oxometallic acids, acyclic hydrocarbons, acyclic/cyclic/ether alcohols, ketones and quinones, mono- and polycarboxylic acids, anisidines, amino acids, carboxymide-function compounds, quaternary salts, lecithins, saccharin, organo-sulfur compounds, heterocyclic compounds, nucleic acids, sulfanomides, glycosides, chemically pure sugars, essential oils of citrus fruit, other essential oils, perfumes and toilet waters, gelatin, rosin and resin acids, industrial fatty alcohols, prepared binders, silicones, cellulose, natural polymers, and worked vegetable or mineral carving material. Materials sourced from abroad represent some 30%–40% of material inputs.

The applicant is also requesting authority to use zone procedures to ship from the plant the inedible gelatin (HTSUS 3503.00.20.00) resulting from the manufacture of soft gel capsules from foreign edible gelatin (HTSUS 3503.00.55.10) and to manufacture vegetable-based capsules from imported and domestic carageenan (HTSUS

1302.39, duty rate, 3.2%) and starch (HTSUS 3912.90, duty rate, 5.2%).

Zone procedures would exempt Cardinal from Customs duty payments on foreign materials used in production for export. Up to 5 percent of the plant's shipments are currently exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (primarily duty-free, but up to 10%) instead of the rates otherwise applicable to the foreign input materials (duty free—19%)(noted above). The application indicates that the savings from zone procedures would help improve Cardinal's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is April 19, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 4, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 14010 Roosevelt Blvd., Suite 704, Clearwater, Florida 33762.

Dated: February 10, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–3643 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–809]

Certain Circular Non-Alloy Steel Pipe from Korea; Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the administrative review of the antidumping duty order on certain circular non-alloy steel pipe from Korea. The period of review is November 1, 2001, through October 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act").

EFFECTIVE DATE: February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Holland, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; at telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on certain circular non-alloy steel pipe from Korea covering the period November 1, 2001, through October 31, 2002 (68 FR 68331). The final results for this review are currently due no later than March 30, 2004.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the issues in this case including certain complex price reduction issues, we determine that it is not practicable to complete the final results of this review within the original time limit (*i.e.*, March 30, 2004). Therefore, the Department is extending the time limit for completion of the final results 60 days, or until no later than June 1, 2004, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 12, 2004.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 04–3640 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–813]

Notice of Termination of Antidumping Duty Investigation: Certain Processed Hazelnuts From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 2004.

SUMMARY: On January 28, 2004, Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Williamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards withdrew their antidumping petition, filed on October 21, 2003, regarding certain processed hazelnuts from Turkey. Based on this withdrawal, the Department of Commerce ("the Department") is now terminating this investigation.

FOR FURTHER INFORMATION CONTACT: John Drury at 202–482–0195, Ann Barnett-Dahl at 202–482–3833, or Abdelali Elouaradia at 202–482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

On October 21, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards ("Petitioners"). Petitioners are domestic producers of certain processed

hazelnuts ("hazelnuts"). The Department requested additional information for purposes of determining industry support via the **Federal Register**, *see* Notice of Request for Information and Extension of Time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey, 68 FR 64589–02 (November 14, 2003). The Department initiated the investigation, and notice was published in the **Federal Register**, *see* Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts from Turkey, 68 FR 68032–01 (December 5, 2003). On December 10, 2003, the ITC determined preliminarily that there is reasonable indication that imports of certain processed hazelnuts from Turkey are causing, or threatening material injury to the U.S. industry, *see* International Trade Commission Notice, Certain Processed Hazelnuts from Turkey, 68 FR 70836–02 (December 19, 2003).

Scope of the Investigation

The scope of this investigation covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. In-shell hazelnuts are excluded from the scope of the order.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 0802.22 and 2008.19.2000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

Termination of the Investigation

On January 28, 2004 and January 29, 2004, the Department received letters from counsel to the Petitioners notifying the Department that the Petitioners are no longer interested in seeking relief and are withdrawing their petition for certain processed hazelnuts from Turkey. Under section 734(a)(1)(A) of the Tariff Act of 1930 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate. Section 351.207(b)(1) of the Department's regulations states that the Department may terminate provided it concludes that termination is in the public interest. Based on our assessment of the public interest, we have determined that termination would be in the public interest given that the Petitioners are no longer interested in seeking relief.

Based on information currently on the record, the Department is terminating the antidumping duty investigation on certain processed hazelnuts from Turkey. This action is taken pursuant to section 734(a)(1)(A) of the Act and section 351.207(b)(1) of the Department's regulations.

Dated: February 12, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–3642 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724217–4054–08]

Solicitation of Applications for the Minority Business Development Center (MBDC) Program

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency is revising the announcement soliciting competitive applications to operate its Minority Business Development Center (MBDC) Program published on Wednesday, February 11, 2004 (69 FR 6642). The original solicitation is amended to correct the funding level of the Illinois Statewide MBDC.

DATES: The closing date for applications for each MBDC project is March 10, 2004.

MBDA anticipates that awards for the MBDC program will be made with a start date of April 1, 2004. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Standard Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Minority Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: The Minority Business Development Agency revises its announcement soliciting competitive applications to operate its Minority Business Development Center (MBDC) Program published on Wednesday, February 11, 2004 (69 FR 6642) to amend the funding level for the Illinois Statewide MBDC.

On page 6643, a typographical error appears under the heading "Geographic Service Area". The notice incorrectly states that the cost of performance for each of the two remaining 12-month funding periods from January 1, 2005 to December 31, 2006, is estimated $283,058 and that the Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal Contributions. This notice clarifies that the cost of performance for each of the two remaining 12-month funding periods from January 1, 2005 to December 31, 2006, is estimated at $352,941 and that the Federal amount is $300,000 per each 12-month period. The application must include a minimum cost share of 15% or $52,941 in non-Federal contributions.

On page 6643 of the **Federal Register** notice, the Geographic Service Area for the MBDC Program has been amended to reflect the following changes for the Illinois Statewide MBDC:

Contingent upon the availability of Federal funds, the cost of performance for the first funding period from April 1, 2004 to December 31, 2004 is estimated at $212,293. The total Federal amount is $180,449. The application must include a minimum cost share of 15% or $31,844 in non-Federal contributions. Contingent upon the availability of Federal funds, the cost of performance for each of two (2) remaining 12-month funding periods from January 1, 2005 to December 31, 2006, is estimated at $352,941. The total Federal amount is $300,000. The application must include a minimum

cost share of 15% or $52,941 in non-Federal contributions.

All other provisions in the original solicitation published on Wednesday, February 11, 2004 (69 FR 6642) remain the same.

Dated: February 12, 2004.

Juanita E. Berry,

Federal Register Liaison, Minority Business Development Agency.

[FR Doc. 04–3529 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 0007242218–4055–09]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency is revising the announcement soliciting competitive applications to operate its Native American Development Center (NABDC) Program published on Wednesday, February 11, 2004 (69 FR 6644). The original solicitation is amended to correct the funding level of the Minnesota/Iowa NABDC.

DATES: The closing date for applications for each NABDC project is March 12, 2004.

MBDA anticipates that awards for the NABDC program will be made with a start date of April 1, 2004. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Standard Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: The Minority Business Development Agency revises its announcement soliciting competitive applications to operate its Native American Development Center (NABDC) Program published on Wednesday, February 11, 2004 (69 FR 6644) to provide clarification concerning the total Federal amount for the two (2) remaining 12-month funding periods from January 1, 2005 to December 31, 2006, is estimated at $300,000.

On page 6645 of the **Federal Register** notice, the total Federal amount available for the operation of the Minnesota/Iowa NABDC was incorrectly stated. The total Federal amount should be $160,000 for operation of the Minnesota/Iowa NABDC.

All other provisions in the original solicitation published on Wednesday, February 11, 2004 (69 FR 6644) remain the same.

Dated: February 12, 2004.

Juanita E. Berry,

Federal Register Liaison, Minority Business Development Agency.

[FR Doc. 04–3530 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC)

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seats on its Sanctuary Advisory Council: Business Primary and Alternate, Recreation Alternate, Agriculture Alternate and Education Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. The MBNMS is recruiting an alternate representative for the Education seat, which was vacated by the previously appointed representative before their term had expired. Applicants who are chosen for this seat should expect to serve until February 2005. Applicants who are chosen for the Business, Recreation or Agriculture seats should expect to serve until February 2007.

DATES: Applications are due by March 12, 2004.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4206, or *Nicole.Capps@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast. The Advisory Council's 20 voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts

from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 12, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–3582 Filed 2–18–04; 8:45 am]

BILLING CODE 3510–NK–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

February 13, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that apparel made from 100 percent cotton woven flannel fabrics made from 21 through 36 NM single ring-spun yarns of different colors cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On February 13, 2004, the Chairman of CITA received a petition from Oxford Industries, Inc ("Oxford"). alleging that 100 percent cotton woven flannel fabrics made from 21 through 36 NM single ring-spun yarns of different colors, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 2 X 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel of such fabrics cut and sewn in one or more CBTPA beneficiary country be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 5, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA), as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary country from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271), the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the **Federal Register** that it will follow in considering requests. (66 FR 13502).

On February 13, 2004, the Chairman of CITA received a petition from Oxford alleging that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 1 twill weave construction, weighing not more than 200 grams per square meters, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary country from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than March 5, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–3669 Filed 2–17–04; 9:15 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for a Marine Container Terminal at the Charleston Naval Complex in the City of North Charleston, Charleston County, SC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District intends to prepare an Environmental Impact Statement (EIS) to assess the potential social, economic and environmental effects of the proposed construction of a marine container terminal by the South Carolina State Ports Authority (SCSPA), at the Charleston Naval Complex (CNC), on the Cooper River, in Charleston Harbor, the City of North Charleston, Charleston County, South Carolina. The EIS will assess potential effects of a range of alternatives, including the proposed alternative.

DATES: *General Public Scoping Meeting:* March 16, 2004, 6 p.m., Sterett Hall, Building #180, Charleston Naval Complex, North Charleston, SC (Located at the corner of Hobson Avenue and Calumet Road). *Federal and State Agency Scoping Meeting:* March 22, 2004, 1:30–4:30 p.m., Citadel Alumni Center, Renken Room, 69 Hagood Ave., Charleston, SC.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed project and EIS, please contact Ms. Tracy Hurst, Project Manager, by telephone: (843) 329–8032 or toll free 1–866–329–8187, or by mail: CESAC–RE–P, 69A Hagood Avenue, Charleston, SC 29403. For inquiries from the media, please contact the Corps, Charleston District Public Affairs Officer (PAO), Alicia Gregory by telephone: (843) 329–8123.

SUPPLEMENTARY INFORMATION: An application for a Department of the Army permit was submitted by the SCSPA pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344) on January 24, 2003, and was advertised in a local public notice, P/N #2003–1T–016–PC, on March 7, 2003. The SCSPA submitted revised drawings and clarification of information on impacts on January 29, 2004, which were advertised in a local public notice, P/N #2003–1T–016–PC (revised), on February 13, 2004. The March 7, 2003, public notice is available on Charleston District's public Web site at *http://www.sac.usace.army.mil/permits/pn/PNs20030307/20031T016PC_SCSPA_NewContainerTerminal.pdf*. The February 13, 2004, local public notice is also available on Charleston District's public Web site at *http://www.sac.usace.army.mil/newinternet/org/regulatory/index.htm#permit*. The SCSPA was advised that based on the significant potential social, economic and environmental effects associated with the construction of the proposed marine container terminal at the Charleston Naval Complex, an EIS would be prepared by the Charleston District, Corps of Engineers.

1. *Description of Proposed Project.* The project proposed by the South Carolina State Ports Authority (SCSPA) is to develop a marine container terminal at the south end of the CNC, on the Cooper River, in Charleston Harbor, the City of North Charleston, Charleston County, SC. The proposed terminal is designed to handle primarily containerized cargo and this Notice of Intent will refer to the proposed project as a marine container terminal. The marine container terminal development is approximately 288.1 acres and will support cargo marshalling areas, cargo processing areas, cargo-handling facilities, and related terminal operating facilities. Development of the site includes filling 13.9 acres of freshwater wetlands, and dredging and filling 53.5 acres of waters of the US, to include 7.2 acres of tidal marsh. Adjacent to the dredge and fill area, a 10.3-acre wharf structure measuring 3,000 feet long and 150 feet wide will be constructed. In addition to the container terminal development, the project includes dredging an 86.7-acre berthing area and turning basin adjacent to the wharf. Upland disposal of dredged material is proposed in existing dredged disposal sites located on the south end of Daniel Island, located in the City of Charleston, Charleston County, South Carolina.

2. *Alternatives.* The following alternatives have been identified as reasonable alternatives that will be fully evaluated in the EIS: No Action; the modification of existing SCSPA terminal facilities to meet the purpose and need of and for the proposed project; alternative locations within the jurisdictional authority of the SCSPA where the proposed project might be developed; alternative facility layouts for the proposed marine container terminal project at the CNC; alternatives for surface transportation access associated with the proposed marine container terminal project, and mitigation measures. However, this list is not exclusive and additional alternatives may be considered for inclusion as reasonable alternatives.

3. *Scoping and Public Involvement Process.* Scoping meetings will be conducted to gather information on the scope of the project and the alternatives to be addressed in detail in the EIS. There will be two (2) sessions, one specifically for the Federal and State agencies with regulatory responsibilities and one for the general public (*see* **DATES**). Additional public and agency involvement will be gained through the implementation of a public outreach plan that will be developed from input received by the public.

4. *Significant Issues.* Issues associated with the proposed project to be given significant analysis in the EIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, placement of fill, construction and operation of the proposed terminal and development of associated surface transportation, and related developments on: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, air quality, energy needs, public health and safety, hazardous wastes and materials, food and fiber production, mineral needs, considerations of property ownership, environmental justice and, in general, the needs and welfare of the people.

5. *Cooperating Agencies.* The Federal Highway Administration has agreed to be a cooperating Federal agency due to the proposed facility's potential impact on the regional highway network including the Interstate system.

6. *Additional Review and Consultation.* Additional review and consultation which will be incorporated into the preparation of this EIS will include, but shall not be limited to: Section 401 of Clean Water Act, section 307(c) of the Coastal Zone Management Act; the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the National Historic Preservation Act; the Endangered Species Act, and the Clean Air Act.

7. *Availability of the Draft Environmental Impact Statement.* The Draft Environmental Impact Statement (DEIS) is anticipated to be available in July of 2005. A Public Hearing will be conducted following the release of the DEIS.

Alvin B. Lee,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 04–3609 Filed 2–18–04; 8:45 am]

BILLING CODE 3710–CH–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft Environmental Impact Statement for the L–31N Seepage Management Pilot Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Cancellation notice.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), hereby cancels its Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) as published in 67 FR 43590, June 28, 2002.

The Notice is cancelled because the Corps has determined, through initial plan formulation and preliminary screening of alternative plans, that any potential environmental impacts will not meet the criteria of significance needed for an EIS. The Corps will prepare an Environmental Assessment to document the effects of alternative plans, including the recommended plan.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019; Attn: Ms. Janet Cushing or by telephone at 904–232–2259 or e-mail: *janet.a.cushing@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Dated: January 27, 2004.

James C. Duck,

Chief, Planning Division.

[FR Doc. 04–3610 Filed 2–18–04; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to the President; U.S. Naval War College (NWC)

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The BOA to the President, U.S. NWC, will meet to discuss educational, doctrinal, and research policies and programs at the NWC. The meeting will be open to the public.

DATES: The meeting will be held on Friday, March 19, 2004, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in Conolly Hall, U.S. NWC, 686 Cushing Road, Newport, RI.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Menard, Office of the Provost, U.S. NWC, 686 Cushing Road, Newport, RI 02841–1207, telephone number (401) 841–3589.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the BOA meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the college since the last meeting of the BOA in November 2003.

Dated: February 9, 2004.

J. T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–3591 Filed 2–18–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects Program—Collaboration Research Projects in Traumatic Brain Injury Model Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–6.

Dates:

Applications Available: February 19, 2004.

Deadline for Transmittal of Applications: April 6, 2004.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $500,000–$600,000.

Estimated Average Size of Awards: $600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability Rehabilitation Research Projects (DRRP) program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (Act), as amended. For FY 2004, the competition for new awards focuses on projects designed to meet the priority we describe in the Priority section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on July 30, 2003, (68 FR 44752).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

The Assistant Secretary intends to fund a Collaborative Research Project in Traumatic Brain Injury (TBI) Model Systems for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for persons with TBI. A collaborative research project must—

(1) Collaborate with three or more of the 16 NIDRR Traumatic Brain Injury Model Systems (TBIMS). The three can include the lead project plus additional projects;

(2) Conduct research on questions of significance to TBI rehabilitation, using clearly identified research designs such as randomized control trials, observational research methodologies, or longitudinal studies. The research must focus on areas identified in the New Freedom Initiative (NFI) and in concert with NIDRR's Long-Range Plan (Plan), ensuring that each project has sufficient sample size and methodological rigor to generate robust findings. Areas of interest include

health and function, technology for function, community integration and independent living, employment, and long-term outcomes. The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

(3) Disseminate research findings to clinical and consumer audiences, using accessible formats; and

(4) Evaluate impact of research findings on improved outcomes for persons with TBI.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86 and 97, and (b) The regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $500,000–$600,000.

Estimated Average Size of Awards: $600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other: Additional Requirement*—The TBIMS priority requires the applicants to collaborate with the current TBIMS grantees. The National Rehabilitation Information Center has the contact information for the TBIMS grantees at: *http://www.naric.com/search/pd/notice.*

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–6.

Note: A listing of available FY 2004 discretionary grant applications including this grant application is available on the following Web site: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: February 19, 2004.

Deadline for Transmittal of Applications: April 6, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Disability Rehabilitation Research Projects Program—Collaboration Research Projects in Traumatic Brain Injury Model Systems—CFDA Number 84.133A–6 is one of the programs included in the pilot project. If you are an applicant under the Disability Rehabilitation Research Projects Program—Collaboration Research Projects in Traumatic Brain Injury Model Systems, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System

(e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Disability Rehabilitation Research Projects Program—Collaboration Research Projects in Traumatic Brain Injury Model Systems and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e–GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the DRRP Program—Collaboration Research Projects in Traumatic Brain Injury Model Systems at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. NIDRR will provide information in a letter format on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which it builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and contribute to changes/improvements in policy, practice, and outcomes for individuals with disabilities and their families;
- The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promote the awareness and use of information and findings from NIDRR-funded projects;
- The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their "best" outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes/improvements in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and
- The percentage of new studies funded each year that assess the effectiveness of interventions or

demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.* Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/RERC/Summative/Supplemental.html.* Grantees should consult these sites, on a regular basis, to get details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: February 12, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–3614 Filed 2–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects Program—Research Infrastructure Capacity Building Project; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

DATES: Applications Available: February 19, 2004.

Deadline for Transmittal of Applications: April 6, 2004.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $500,000—$600,000.

Estimated Average Size of Awards: $600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

(1) *Purpose of Program:* The purpose of the Disability Rehabilitation Research Projects (DRRP) program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, (Act) as amended.

For FY 2004, the competition for new awards focuses on projects designed to meet the priority we describe in the Priority section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on July 25, 2003 (68 FR 44055) under CFDA Number 84.133A–4.

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

The Assistant Secretary will fund one DRRP that will focus on a research, development, and dissemination project on Research Infrastructure Capacity Building. The reference for this topic can be found in NIDRR's Long-Range Plan (Plan), chapter 9, Capacity Building: Priorities in Capacity Building. In carrying out this priority the DRRP must:

(1) Develop and evaluate an innovative method(s) for establishing long-term collaborative research partnerships, with an emphasis on relationships among minority entities, Indian tribes, and nonminority entities;

(2) Research, develop, and evaluate strategies to assess the efficacy of existing research theories, methodologies, and measures for studying and describing underrepresented individuals with disabilities from minority racial and ethnic populations and their needs;

(3) Research, identify and modify or develop, and evaluate scientifically valid measurement strategies and methodologies for research involving the study of underrepresented minority racial and ethnic populations; determine their efficacy; and examine the implications of introducing newly developed approaches designed specifically for the study of this population;

(4) Develop and evaluate research principles or standards for culturally appropriate and linguistically competent disability and rehabilitation research, and disseminate guidelines; and

(5) Develop, implement, and evaluate approaches for disseminating research findings, information about best practices for research involving underrepresented minority racial and

ethnic populations, and information about research collaboration.

In carrying out the purposes of the priority, the DRRP must:

- In the first three months of the grant, develop and implement a research partnership plan ensuring that all activities are predominantly focused on research infrastructure capacity building and provide for mutual benefit for each member of the partnership, including persons with disabilities or their representatives;
- In the first year of the grant, implement a plan to disseminate research results;
- In the third year of the grant, conduct a state-of-the-science conference focused on the funded area of research and related topics;
- In the fourth year of the grant, publish and disseminate a comprehensive report on the outcomes and proceedings of the conference;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Conduct ongoing program evaluation and produce a closing report describing research outcomes, as they relate to the research goals and objectives, and future directions for research infrastructure development and capacity building.

The Plan can be accessed on the Internet at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86 and 97, and (b) The regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $600,000.
Estimated Range of Awards: $500,000–$600,000.
Estimated Average Size of Awards: $600,000.
Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement may include one or more of the following (34 CFR 350.40(b)):

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–5.

Note: A listing of available FY 2004 discretionary grant applications including the application for this competition is available on the following Web site: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: February 19, 2004.

Deadline for Transmittal of Applications: April 6, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects Program—Research Infrastructure Capacity Building Project—CFDA Number 84.133A–5 is one of the programs included in the pilot project. If you are an applicant under the Disability Rehabilitation Research Projects Program—Research Infrastructure Capacity Building Project, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Disability Rehabilitation Research Projects Program—Research Infrastructure Capacity Building Project and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the DRRP at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. NIDRR will provide information in a letter format on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert

peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which it builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and contribute to changes/improvements in policy, practice, and outcomes for individuals with disabilities and their families;
- The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promote the awareness and use of information and findings from NIDRR-funded projects;
- The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their "best" outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes/improvements in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and
- The percentage of new studies funded each year that assess the effectiveness of interventions or demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.* Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/RERC/Summative/Supplemental.html.* Grantees should consult these sites, on a regular basis, to get details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 12, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–3615 Filed 2–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The International Research and Studies Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Publication of the year 2003 annual report.

SUMMARY: The Secretary announces the publication of the annual report listing the books and research materials produced with assistance provided under Section 605 of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: Section 605 of the HEA authorizes the International Research and Studies Program.

Under this program, the Secretary awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in foreign languages, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs, supported under Title VI of the HEA, by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Evaluation of the extent to which programs assisted under Title VI of the HEA that address national needs would not otherwise be offered;

(d) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(e) Research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(f) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists;

(g) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs;

(h) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the education community, including elementary and secondary schools; and

(i) Research on applying performance tests and standards across all areas of foreign language instruction and classroom use.

2003 Program Activities

In fiscal year 2003, 27 new grants ($2,979,686) and 24 continuation grants

($2,665,562) were awarded under the International Research and Studies Program. These grants are active currently, and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

A number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. These are listed below.

BILLING CODE 4000-01-P

TITLE	AUTHOR/LOCATION
A Learner's Dictionary of Adeni Arabic	Hamdi A. Qafisheh Near Eastern Studies University of Arizona P.O. Box 210080 Tucson, AZ 85721-0080
Nahuatl Learning Environment Online: CD and Lexicon	Jonathan D. Amith Nahuatl Language Institute Yale University 34 Hilhouse Avenue, Suite 342 New Haven, CT 06520
Identifying New Directions for African Studies	Larry W. Bowman Department of Political Science University of Connecticut 341 Mansfield Road, U-24 Storrs, CT 06269-1024
Internationalizing Teacher Education: What Can Be Done?	Ann Schneider 3319 Fessenden Street, NW Washington, DC 20008-2034
Interactive Intermediate-Advanced Filipino CD-ROM and Supplementary Web-based Materials	Teresita V. Ramos Department of Hawaiian and Indo-Pacific Languages University of Hawaii-Manoa Honolulu, HI 96822
Southeast Asia-Site: Language Learning Research over the World Wide Web	George M. Henry Northern Illinois University Department of Computer Science DeKalb, IL 60115-2860
Kolay Gelsin! Beginning Turkish Textbook and Turkish-English Glossary	Suzan Ozel 303 East Vermilia Avenue Bloomington, IN 47401

TITLE	AUTHOR/LOCATION
Kolay Gelsin! Beginning Turkish Textbook and Turkish-English Glossary	Suzan Ozel 303 East Vermilia Avenue Bloomington, IN 47401
Spotlight on Southeast Asia: Connections and Cultures	Hazel S. Greenberg The American Forum for Global Education 120 Wall Street, Suite 2600 New York, NY 10005
Field-based Case Studies on Management and Organizational Behavior in East Asia	Anne Marie Francesco Pace University 1 Pace Plaza New York, NY 10038
A Door into Hindi: Web-Mounted Elementary Language Instruction	Tony K. Stewart North Carolina Center for South Asia Studies North Carolina State University Box 8103 Raleigh, NC 27695-8103
Foreign Language Reading in the Digital Age: The Gemini Computer Authoring System	Robert Fischer Texas State University-San Marcos 601 University Drive San Marcos, Texas 78666

BILLING CODE 4000–01–C

To obtain a copy of a completed study, contact the author at the given address.

FOR FURTHER INFORMATION CONTACT: For a copy of the 2003 annual report and further information regarding the International Research and Studies Program, contact Jose L. Martinez, Program Officer, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635 or via e-mail at: *Jose.Martinez@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: www.gpoaccess.gov/nara/index.html

(Program Authority: 20 U.S.C. 1125.)

Dated: February 12, 2004.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 04–3613 Filed 2–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE-FG01–04ER04–14; Program for Ecosystem Research: Scaling Across Levels of Biological Organization in Ecological Systems

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for

grants for the Scaling Across Levels of Biological Organization in Ecological Systems Initiative, a component of the BER Program for Ecosystem Research (PER). Applications should describe research projects to determine the theoretical and empirical bases of whether, and how, information obtainable at the level of genomes and proteomes of species or communities can be used to explain, and predict, effects of environmental changes associated with energy production on the structure and functioning of important ecosystems. The focus of applications should be to: (1) Demonstrate a capability to collect genomic, proteomic, and/or metabolomic data from within a terrestrial ecosystem and then use that data to explain and/or predict observed effects of controlled manipulations of temperature, soil moisture, atmospheric carbon dioxide concentration, and/or atmospheric ozone concentration on the structure and functioning of the ecosystem, or (2) advance the theoretical basis for scaling genomic and proteomic information to higher levels of biological organization, ultimately to the level of whole ecosystems.

All applications submitted in response to this Notice must explicitly state how the proposed research will support accomplishment of the BER Long Term Measure of Scientific Advancement to deliver improved data and models to determine acceptable levels of greenhouse gases in the atmosphere.

DATES: Applicants are encouraged (but not required) to submit a 1–2 page preapplication for programmatic review. There is no deadline for the preapplication, but early submission of preapplications is encouraged to allow time for meaningful discussions.

Formal applications submitted in response to this Notice must be received by 4:30 p.m., Eastern Time, April 29, 2004, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2004.

ADDRESSES: Preapplications referencing Notice DE-FG01–04ER04–14, should be sent to Dr. Jeffrey S. Amthor, PER program manager, via e-mail to *jeff.amthor@science.doe.gov*. Please include "Preapplication Notice DE–FG01–04ER04–14" in the e-mail subject field.

Formal applications referencing Program Notice DE–FG01–04ER04–14, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Amthor, phone: (301) 903–2507; e-mail: *jeff.amthor@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: Program for Ecosystem Research (PER) and the Scaling Initiative

The PER mission is to measurably improve the scientific basis for predicting or detecting effects of environmental changes associated with energy production (*i.e.*, global and regional changes in atmospheric composition and related climatic changes) on terrestrial ecosystems and their component organisms and processes. Terrestrial ecosystems, their functions, and their components most valued by society are of highest priority to the PER. The PER mission supports the DOE Energy Strategic Goal "to protect our national and economic security by promoting a diverse supply and delivery of reliable, affordable, and environmentally sound energy" by contributing to the science base needed to judge environmental implications of various energy supply options.

The PER is intended to contribute specifically to the long-term BER program goal of delivering data and models needed to determine acceptable levels of greenhouse gases in the atmosphere. The PER's contribution to this goal is carried out by quantifying cause-and-effect relationships between environmental changes associated with energy production (*i.e.*, increased concentrations of greenhouse gases in the atmosphere and related environmental changes) and the structure and functioning of important terrestrial ecosystems. Understanding of such relationships is important to a determination of acceptable levels of greenhouse gases.

The theme defining PER objectives is mechanistic understanding and quantification of effects of ongoing and potential future environmental changes associated with energy production on whole ecosystems. Present program emphasis is on effects of multiple (concurrent) environmental changes, *i.e.*, effects on ecosystems of combinations of changes in atmospheric composition and/or climatic variables. Environmental changes of key interest to the PER are: (1) Warming and changes in diurnal, seasonal, and interannual temperature cycles; (2) changes in precipitation and evapotranspiration (*e.g.*, intensification of the hydrologic cycle); and (3) increasing atmospheric carbon dioxide and (tropospheric) ozone concentrations. Specific PER objectives are to improve scientific understanding of how and why (or if) terrestrial ecosystems and their component organisms are affected by, and respond to, multiple environmental changes, and how and why critical biological and/or ecological processes in terrestrial ecosystems are controlled or modified by multiple environmental changes.

The PER supports experimental research, (in the laboratory or field as appropriate to individual research project objectives), and modeling at both universities and government laboratories. The research and modeling considers both, (either) direct and indirect effects of environmental changes on terrestrial ecosystems, their components, their processes, and their structures. Experimental research based on underlying theory, and modeling that considers ecological hierarchies (*i.e.*, multi-level or mechanistic modeling), are foci of the PER. Ecosystem responses to environmental changes of particular interest include: (1) Adjustments at the ecosystem scale, such as changes in the organized hierarchy of ecosystem processes, structures, biological

diversity, and/or succession; and (2) adjustments at the organismal scale that are manifested at the ecosystem scale, including physiological, biochemical, and/or genetic changes that may facilitate (or hinder) ecosystem homeostasis.

The goal of the new Scaling Across Levels of Biological Organization in Ecological Systems Initiative is to determine the theoretical and empirical bases of whether, and how, information obtainable at the level of genomes and proteomes of species or communities can be used to explain, and predict, effects of environmental changes associated with energy production on the structure and functioning of important ecosystems. This is a new emphasis within PER and is intended to explicitly link ecosystem research and modeling with the rapidly advancing capabilities being developed in genomics, proteomics, and metabolomics.

Request for Grant Applications

This Notice requests grant applications for activities in support of the goal of the Scaling Initiative as articulated above. Specifically, research is sought to advance the following two areas:

(1) The uses of genomic, proteomic, and/or metabolomic measurements and analyses to explain and/or predict effects of controlled changes in temperature, soil moisture, atmospheric carbon dioxide concentration, and/or atmospheric ozone concentration on the structure and functioning of ecosystems, or

(2) the theoretical and/or computational bases for scaling information from the level of genomes, proteomes, and/or metabolomes to higher levels of biological organization, ultimately to the level of whole ecosystems.

Applications involving empirical studies (area (1) above) should consider the use of existing manipulative field experiments as platforms for research. (Requests for support for implementation or maintenance of field manipulations of temperature, soil moisture, atmospheric carbon dioxide concentration, and/or atmospheric ozone concentration will not be considered. Moreover, studies using natural gradients of environmental factors, rather than controlled manipulations, will not be considered.) In particular, applications should propose to use existing field experiments to obtain new genomic, proteomic, and/or metabolomic data and use that data and, if appropriate, hierarchical theory of biological and ecological systems to: (1) explain (previously) observed effects of the manipulation(s) of temperature, soil moisture, atmospheric carbon dioxide concentration, and/or atmospheric ozone concentration on ecosystem-scale processes and states (ecosystem structure and functioning); and/or (2) make predictions based on theoretical models about changes in ecosystem structure and/or functioning that can and will be tested with observations and data at multiple scales within the range from the genome of individual species to the entire ecosystem. Performance of the ecosystem-scale observations and data analysis can be made a component of the proposed research. A few laboratory (*i.e.*, mesocosm or microcosm) projects might be considered for funding, but it will be critical for such projects to represent well the processes, structures, and functioning of intact (actual) terrestrial ecosystems. Experimental control of the same environmental variables (ozone concentration, carbon dioxide concentration, soil moisture, and/or temperature) would need to be included in laboratory projects.

Applications involving theoretical and modeling studies (area (2) above) should concentrate on developing new theoretical models or approaches to biological and ecological modeling. Such studies should incorporate genomic, proteomic, and/or metabolomic data, along with information on the associated biochemical and physiological mechanisms and pathways that control and influence biological and ecological processes, into hierarchical (multi-level) ecosystem models. The new models or modeling approaches should enhance a capability to explain and predict effects of environmental changes associated with energy production on ecosystem structure and functioning. The use of existing biological or ecological models to study or simulate biological or ecological effects of environmental change, without clearly articulated plans to improve the theoretical bases of scaling across multiple levels of biological organization within such models, will not be considered for support.

The focus of all applications should be on the advancement of the theoretical and empirical bases for scaling information and data from the genomic, proteomic, and metabolomic level of component species and communities up through higher levels of biological organization within ecosystems to explain the causal mechanisms and pathways that determine whether and how effects of energy-related environmental changes are manifested on the structure and functioning of an ecosystem.

All applications submitted in response to this Notice must explicitly state how the proposed research will support accomplishment of the BER Long Term Measure of Scientific Advancement to deliver improved data and models to determine acceptable levels of greenhouse gases in the atmosphere. Applications failing to fulfill this criterion will not be considered for funding.

Applications focusing primarily on plant or ecosystem carbon exchange or carbon balance, or directed at carbon sequestration in terrestrial ecosystems, are inappropriate for PER. Such applications should be directed to the DOE BER Terrestrial Carbon Processes (TCP) and Carbon Sequestration programs, respectively.

To enhance potential collaboration and synergism within the Scaling Initiative and the larger PER, successful applicants will participate in annual Investigator Meetings. Costs for such meetings should be included in each application budget, and should be based on one trip of 5 days each year to Washington, DC, for all key personnel of each project.

Program Funding

It is anticipated that about $2,400,000 will be available for multiple awards in Fiscal Year 2004. Applications may request project support for up to 3 years, with out-year support contingent on availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $100,000 to $500,000 total costs, unless there is prior approval from the Program Manager. DOE may encourage collaboration among prospective investigators to promote joint applications by using information obtained in the preapplication or other forms of communication. DOE is under no obligation to pay for any costs associated with preparation or submission of applications.

Preapplications

A preapplication is strongly encouraged (but not required) prior to submission of a full application. The preapplication should list the Principal Investigator's name, institution, address, telephone number, and E-mail address; title of the project; and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the goals of the

Scaling Across Levels of Biological Organization in Ecological Systems Initiative. A response to each preapplication, discussing the potential program relevance of a formal application, generally will be communicated within 15 days of receipt. There is no deadline for the submission of preapplications, but applicants should allow sufficient time to meet the application deadline of April 29, 2004. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both federal and non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Application Guide and required forms is made available via the World Wide Web: *http://www.sc.doe.gov/production/grants/grants.html.*

In addition, for this Notice, the research description must be 20 pages or less (10-point or larger font), including figures and tables but excluding attachments, and must include a one-page summary of the proposed project. The summary should appear on a separate page (page 1) and must include the proposed-project title; name of the applicant and the applicant's address, phone number, and e-mail address; names of any co-investigators; and the proposed-project summary. Attachments should include literature references cited in the research description, curriculum vitae for each investigator (2-page maximum per investigator), a listing of all current and pending federal support for each investigator, and letters of intent when collaborations are part of the proposed research.

For researchers who do not have access to the World Wide Web (WWW), please contact Karen Carlson, Office of Biological and Environmental Research, Climate Change Research Division, SC–74/Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, phone: (301) 903–3338, fax: (301) 903-8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC February 10, 2004.

Martin Rubinstein,

Acting Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–3606 Filed 2–18–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–11; Theoretical Research in Plasma and Fusion Science

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for theoretical research relevant to the U.S. program in magnetic fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in Fiscal Year 2005 should submit in response to this Notice.

The specific areas of interest are:

1. Magnetohydrodynamics and Stability
2. Confinement and Transport
3. Edge and Divertor Physics
4. Plasma Heating and Non-inductive Current Drive
5. Innovative/Integrating Concepts
6. Atomic and Molecular Processes in Plasmas

More specific information on each area of interest is outlined in the general and program specific **SUPPLEMENTARY INFORMATION** section below. OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. The Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this notice. Such grants, if funded, will be subject to periodic reviews of progress.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their previous application(s), which received funding. A Principal Investigator may submit only one application under each area of interest as listed above.

DATES: To permit timely consideration for awards in Fiscal Year 2005, applications submitted in response to this notice must be received by DOE no later than 4:30 p.m., Eastern Time, April 1, 2004. Electronic submission of formal applications in PDF format is required. It is important that the submission be in a single PDF file.

Applicants are requested to submit a letter-of-intent by March 4, 2004, which includes the title of the application, the name of the Principal Investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. The letters-of-intent should be sent by e-mail to the following e-mail address: *john.sauter@science.doe.gov* and the Subject line should state: Letter-of-intent regarding Program Notice 04–11.

ADDRESSES: Formal applications referencing Program Notice DE–FG01–04ER04–11, must be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date

on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of using multiple files, it is important that the submission be in a single PDF file if possible. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, *etc.* Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, SC–55/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

1. Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*

2. Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address: *curt.bolton@science.doe.gov.*

3. Edge and Divertor Physics: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*

4. Plasma Heating and Non-inductive Current Drive: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*

5. Innovative/Integrating Concepts: Francis Thio, Research Division, SC–55, Telephone (301) 903–4678, or by Internet address: *francis.thio@science.doe.gov*; or Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address: *steve.eckstrand@science.doe.gov.*

6. Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

Program Funding

It is anticipated that about $5,000,000 of Fiscal Year 2005 funding will be available to fund new work, or renewals of existing work, from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant effort in future years (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. The number of grants funded, and the amount of funding for each grant, will depend on the number and quality of the applications received.

Collaborative research projects involving more than one institution, as well as basic work in support of the Scientific Discovery through Advanced Computing initiative, are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at: *http://www.science.doe.gov/production/grants/Colab.html.*

Since we expect that reviewers will be asked to review several applications, those applications from individual PIs or small groups (1–4 people) should be limited to a maximum of twenty (20) pages (including text and figures) of technical information, while applications from larger theory groups should be limited to thirty (30) pages. All applications should be in a single PDF file. The single PDF file may also include a few selected publications in an Appendix as background information. In addition, in the electronic submission, please limit biographical and publication information for the principal investigator and senior personnel to no more than two pages each. Each principal investigator should provide an E-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, (5) a discussion of the impact of the proposed research on other fields of science, and (6) for projects requiring significant computational resources (*e.g.*, at the National Energy Research Scientific Computing Center), an estimate and justification of the resources that will be required. In addition if the work is to be part of the International Tokamak Physics Activity (ITPA) activities, the PI should include adequate funding to cover all the needed ITPA related travel.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605 (*http://www.science.doe.gov/production/grants/605index.html*). Included with each criteria are the detailed questions that are asked of the reviewers.

1. Scientific and/or Technical Merit of the Project

- Does this application address an important problem in plasma science, plasma technology, fusion energy science, or fusion energy technology?
- How does the proposed research compare with other research in its field, both in terms of scientific and/or technical merit and originality?
- What is the likelihood that it will lead to new or fundamental advances in its field?

2. Appropriateness of the Proposed Method or Approach

- Are the conceptual framework, methods, and analyses adequately developed and likely to lead to scientifically valid conclusions?
- Does the proposed research employ innovative concepts or methods?
- Does the applicant recognize significant potential problems and consider alternative strategies?

3. Competency of the Applicant's Personnel and Adequacy of the Proposed Resources

- How well qualified are the applicant's personnel to carry out the proposed research? (If appropriate, please comment on the scientific reputation and quality of recent research by the principal investigator and other key personnel.)
- Please comment on the applicant's research environment and resources.
- Does the proposed work take advantage of unique facilities and capabilities and/or make good use of collaborative arrangements?

4. Reasonableness and Appropriateness of the Proposed Budget

- Is the proposed budget and staffing levels adequate to carry out the proposed research?

The reviewers are also asked to comment on Other Appropriate Factors:

- How is the proposed project relevant to the Office of Fusion Energy Science's goals?
- Could the proposed research make a significant contribution to another field?
- Is there potential for spin-offs?
- If applicable, please comment on the educational benefits of the proposed activity.

Scientific and technical merit also includes the importance and relevance of the proposed research to the U.S. fusion program. Accordingly, preference will be given to work based in the U.S.

In addition, proposals from theory groups will also be rated on the synergy of the group and the management of the group. With respect to synergy, the criteria are:

(1) Clear evidence of collaborative work.

(2) The extent to which the group addresses difficult problems requiring a team effort.

With respect to management the criteria are:

(1) Clear evidence of scientific leadership.

(2) The extent to which the management evaluates the relevance and scientific impact of the groups work.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors, such as ensuring an appropriate balance among the program areas and within the program areas, ensuring support for major computational efforts, ensuring support for experiments, and quality of previous performance.

Selection of applications/proposals for award will be based upon the findings of the evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability.

Program Specific Information

1. Magnetohydrodynamics and Stability

Grant applications are solicited for new research or continuation of past efforts in magnetohydrodynamics (MHD) theory in support of work on magnetically confined fusion plasmas. Current areas of interest include advanced tokamak (AT), innovative confinement concepts (ICC), burning plasma physics and steady state, high-beta plasma issues. Both analytical and computational approaches will be considered. Additional work is needed on nonlinear MHD codes to include new physics, such as extended MHD (including flows and various non-ideal MHD effects), resistive wall modes, and particularly neoclassical tearing modes. Finally, basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale MHD codes will also be considered.

2. Confinement and Transport

Applications will be considered in the area of confinement and transport in plasmas. This area covers plasma turbulence, energy, particle, momentum and radiation transport in the core of the plasma and theory based transport modeling. The work of interest includes work in support of tokamak as well as non-tokamak innovative concepts. Topics of interest include among others, electromagnetic effects on turbulence, shear flow generation and its impacts on transport, and understanding of the role of collisions in turbulent plasmas. Both analytical and computational work is of interest. Basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale codes to explore turbulence will also be considered.

3. Edge and Divertor Physics

Applications will be considered in the area of edge physics theory. This area covers edge plasma turbulence, energy, particle and radiation transport in the edge of the plasma and in the neighborhood of the separatrix. The work of interest includes neutrals transport in divertors and plasma edge region, atomic physics processes affecting temperature, radiation and flame front propagation in divertors, and pedestal and Elm theory and modeling. Both analytical and numerical models are of interest. Techniques and algorithms for modeling fast particles in the edge region, as well as adaptive grid methods and their application to modeling of plasma turbulence and transport in the edge region will be considered.

4. Plasma Heating and Non-Inductive Current Drive

Applications will be considered in the area of radio frequency (RF) physics in plasmas. This includes RF propagation, heating and current drive. Of interest are both analytical and numerical treatments of interaction of plasmas with radio frequency waves. These include electron cyclotron, ion cyclotron, lower hybrid, and Bernstein waves. Topics of interest include, among others, physical processes involved in conversion layers, power deposition for temperature profile control, and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

5. Innovative/Integrating Concepts

Grant applications are desired for theoretical and computational research on innovative concepts that have the possibility of leading to improved magnetic fusion systems. Increased theoretical and computational research is needed to help in the analysis of experimental data and aid in planning innovative fusion related experiments. Topics of interest include: equilibrium and stability of 3D systems, including

island formation; extension of turbulence models to 3D systems; improvement in extended MHD modeling of RFPs; increased understanding of turbulent transport in RFPs; and spheromak formation. Applications are also desired for theoretical and computational research on integrated studies that include multiple topics.

6. Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas. Basic atomic processes that are important for modeling high energy density plasmas produced by high power lasers or ion beams may also be considered. The program has found understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on February 11, 2004.

Martin Rubinstein,

Acting Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–3607 Filed 2–18–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–163–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 12, 2004.

Take notice that on February 9, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 201, Third Revised Sheet No. 247, Original Sheet No. 275, and Sheet Nos. 276–399, to become effective March 10, 2004.

Midwestern is proposing to add a new section 35 to the General Terms and Conditions of its tariff to establish a provision regarding the reservation of capacity for future expansion/extension projects and to clarify the contract term extension rights for interim shippers for capacity reserved under section 16.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–329 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–102–002]

Pinnacle Pipeline Company; Notice Of Compliance Filing

February 12, 2004.

Take notice that on February 9, 2004, Pinnacle Pipeline Company (Pinnacle) tendered for filing to its FERC Gas Tariff, Original Volume 1, Substitute Original Sheet No. 7.

Pinnacle states that the proposed tariff is submitted in compliance with the Commission's Order granting rehearing in Docket No. CP03–323–000, *et al.*

Pinnacle has revised Original Sheet No. 7 so that the rates that it lists for Rate Schedule FT and Rate Schedule IT services are based on Pinnacle's actual projected throughput volumes, instead of Pinnacle's system capacity. Pinnacle has requested that the Substitute Original Sheet No. 7 be made effective October 8, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–332 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–146–001]

Southwest Gas Storage Company; Notice of Compliance Filing

February 12, 2004.

Take notice that on February 4, 2004, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 125 proposed to become effective March 1, 2004.

Southwest states that the purpose of this filing is to replace Second Revised Sheet No. 125 in the original filing on January 30, 2004, with Third Revised

Sheet No. 125. Southwest further states that in its original filing in the subject docket, Southwest inadvertently submitted Second Revised Sheet No. 125, which had previously been rejected as moot in the Commission's Letter Order dated April 25, 2003, in Docket No. RP00–471–001.

Southwest further states that copies of this filing are being served on all affected customers and applicable State regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–330 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–162–000]

Transcontinental Gas Pipe Line Corporation; Notice Of Tariff Filing

February 12, 2004.

Take notice that on February 9, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 282, Fifth Revised Sheet No. 300, Sixth Revised Sheet No. 301, Tenth Revised Sheet No. 302 and Fourth Revised Sheet No. 302A, Seventh Revised Sheet No. 321 and Eighth Revised Sheet No. 322, to be effective March 1, 2004.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–331 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–82–000]

NRG Power Marketing, Inc., Connecticut Jet Power LLC, Middletown Power LLC, and Montville Power LLC, Complainants v. ISO New England, Respondent; Notice of Complaint

February 12, 2004.

Take notice that on February 10, 2004, the NRG Companies filed a Complaint against ISO New England, Inc. (ISO–NE). The NRG Companies request that the Commission issue an order: (1) Finding that the ISO violated its Market Rules and Commission Orders by denying the NRG Companies Operating Reserve Payments in the real-time energy markets administered by the ISO, when the NRG Companies' generating units were directed by the ISO to provide Operating Reserves as Pool-Scheduled Resources for several Operating Days after the Operating Day in which the units Self-Scheduled; (2) directing ISO to pay $290,375.22 to NRG for Operating Reserve Payments withheld to date; and (3) directing the ISO to work towards modifying its market rules and software to guarantee that partially Self-Scheduled participants receive as-bid costs for the Pool-Scheduled increments of their output.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to

the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–313 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2093–001, et al.]

Elkem Metals Company, et al.; Electric Rate and Corporate Filings

February 11, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Elkem Metals Company

[Docket No. ER00–2093–001]

Take notice that on February 9, 2004, Elkem Metals Company-Alloy L.P. (Elkem Alloy) tendered for filing (1) an updated market power analysis in compliance with the Federal Energy Regulatory Commission's Order authorizing Elkem Alloy to engage in wholesale sales of electric power at market-based rates in Docket No. ER00–2093–000, and (2) an amendment to its market-based rate tariff to adopt the Commission's new Market Behavior Rules issued November 17, 2003, in Docket Nos. EL01–118–000 and EL01–118–001.

Comment Date: March 1, 2004.

2. Mountain View Power Partners, LLC

[Docket No. ER01–751–005]

Take notice that on February 9, 2004, Mountain View Power Partners, LLC (MVPP) tendered for filing an updated market power analysis in compliance with the Federal Energy Regulatory Commission's Order authorizing MVPP to engage in wholesale sales of electric power at market based rates in Docket No. ER01–751–000.

Comment Date: March 1, 2004.

3. California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company

[Docket Nos. ER04–445–001, ER04–435–001, ER04–441–001, and ER04–443–001]

Take notice that on February 9, 2004, California Independent System Operator Corporation (ISO), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively the Filing Parties) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission regulations, jointly submitted for filing a Standard Large Generator Interconnection Agreement in compliance with Order No. 2003.

Comment Date: March 1, 2004.

4. Public Service Company of New Mexico

[Docket No. ER04–534–000]

Take notice that on February 9, 2004, Public Service Company of New Mexico (PNM) submitted for filing two executed service agreements for firm point-to-point transmission service with Texas-New Mexico Power Company (TNMP), under the terms of PNM's Open Access Transmission Tariff. PNM requests January 1, 2004, as the effective date for each agreement.

PJM states that copies of the filing have been sent to TNMP, the New Mexico Public Regulation Commission and the New Mexico Attorney General. PNM's states that the filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment Date: March 1, 2004.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–535–000]

Take notice that on February 9, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2002), submitted for filing a Facilities Construction Agreement among Cinergy Services, Inc., acting as agent for and on behalf of its operating company, PSI Energy, Inc., the Midwest ISO and Hoosier Energy Rural Electric Cooperative, Inc., acting as agent for and on behalf of Hoosier Energy Rural Electric Cooperative, Inc. and Wabash Valley Power Association, Inc.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: March 1, 2004.

6. NUI Energy Brokers, Inc.

[Docket No. ER04–536–000]

Take notice that on February 9, 2004, NUI Energy Brokers, Inc. (NU Energy Brokers) tendered for filing in accordance with 18 CFR 35.15 of the Commission's rules and regulations, a Notice of Cancellation of its Electric Rate Schedule FERC No. 1. NU Energy Brokers request a February 10, 2004, effective date.

Comment Date: March 1, 2004.

7. Northeast Utilities Service Company

[Docket No. ER04–537–000]

Take notice that on February 9, 2004, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light and Power Company, Public Service Company of New Hampshire, and Select Energy, Inc. (Select), submitted pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to the Littleton Electric Light Department of Littleton, Massachusetts (Littleton). NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

NUSCO states that a copy of this filing has been mailed to Littleton and Select.

Comment Date: March 1, 2004.

8. Northeast Utilities Service Company

[Docket No. ER04–538–000]

Take notice that on February 9, 2004, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Holyoke Water Power Company, and Select Energy, Inc. (Select) tender for filing pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to the Groveland Municipal Light Department of Groveland, Massachusetts (Groveland). NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

NUSCO states that a copy of this filing has been mailed to Groveland and Select.

Comment Date: March 1, 2004.

9. Wheelabrator Shasta Energy Company Inc.

[Docket No. ER04–540–000]

Take notice that on February 9, 2004, Wheelabrator Shasta Energy Company Inc. (Shasta Energy) tendered for filing Shasta Energy's revised Rate Schedule FERC No. 2. Shasta Energy states that the tariff has been revised to delete the code of conduct governing the relationship between Shasta Energy and

Duke Energy Corporation because the proposed affiliation between those entities has not occurred.

Comment Date: March 1, 2004.

10. Northeast Utilities Service Company

[Docket No. ER04–541–000]

Take notice that on February 9, 2004, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light and Power Company, Public Service Company of New Hampshire, and Select Energy, Inc. (Select), submitted pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to the Rowley Municipal Light Plant of Rowley, Massachusetts (Rowley). NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

NUSCO states that a copy of this filing has been mailed to Rowley and Select.

Comment Date: March 1, 2004.

11. Northeast Utilities Service Company

[Docket No. ER04–542–000]

Take notice that on February 9, 2004, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Holyoke Water Power Company, and Select Energy, Inc. (Select), submitted pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to The Town of Merrimac Municipal Light Department of Merrimac, Massachusetts (Merrimac). NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

NUSCO states that a copy of this filing has been mailed to Merrimac and Select.

Comment Date: March 1, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–312 Filed 2–18–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Banking Policy; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Banking Policy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that the renewal of the FDIC Advisory Committee on Banking Policy ("the Committee") is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee will continue to provide advice and recommendations on a broad range of issues relating to the FDIC's mission and activities, including, but not limited to: the delivery of services by the FDIC, its corporate infrastructure, and policy initiatives in the areas of deposit insurance, supervision of financial institutions, resolutions and management of failing and failed institutions, and other issues impacting the financial services industry. The structure and responsibilities of the Committee are unchanged from when it was originally established in March 2002. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–3742.

Dated: February 12, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. E4–311 Filed 2–18–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010982–035.

Title: Florida-Bahamas Shipowner and Operators Association.

Parties: Tropical Shipping and Construction Co., Ltd.; King Maritime, Inc.; Pioneer Shipping Ltd.; Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; G&G Marine, Inc.; and Caicos Cargo Ltd.

Synopsis: The agreement adds a King Maritime, Inc. as a party to the agreement.

Agreement No.: 011867–001.

Title: Norasia/GSL/CSCL Round the World Service Agreement.

Parties: Norasia Container Lines Limited; Gold Star Line Ltd.; and China Shipping Container Lines Co., Ltd.

Synopsis: The amendment adds China Shipping Container Lines Co., Ltd as a party and makes conforming changes to accommodate its participation.

By Order of the Federal Maritime Commission.

Dated: February 12, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–3589 Filed 2–18–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 04–03]

Nick International Shipping, Inc. and Olimpia Sandoval a.k.a Marisela Cordero—Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984, as Well as the Commission's Regulations at 46 CFR Parts 515 and 520; Notice of Investigation and Hearing

Notice is given that on February 9, 2004, the Federal Maritime Commission

served an Order of Investigation and Hearing on Nick International Shipping, Inc. ("Nick") and Olimpia Sandoval a.k.a. Marisela Cordero ("Olimpia Sandoval"). Nick was incorporated in the State of New York on March 24, 1994, and is presently located at 1841 Carter Avenue, Bronx, New York 10457. Ms. Olimpia Sandoval occupies the position of President of Nick and owns 75% of the capital stock. The other 25% of the stock is owned by Mr. Nicholas Sandoval who occupies the position of Vice President. Nick appears to be an ocean transportation intermediary ("OTI") operating as an unlicensed, unbonded, and untariffed non-vessel-operating common carrier ("NVOCC") primarily in the trade between the United States and the Dominican Republic.

Based on evidence available to the Commission, it appears that, from at least August 14, 2000, Nick knowingly and willfully operated as a common carrier without publishing a tariff showing all of its active rates and charges. Moreover, it appears that Nick has knowingly and willfully provided transportation services as an NVOCC with respect to numerous shipments from at least August 14, 2000, without obtaining an OTI license from the Commission and without providing proof of financial responsibility.

This proceeding, therefore, seeks to determine whether: (1) Whether Nick International Shipping, Inc. violated section 8(a) of the 1984 Act and the Commission's regulations at 46 CFR part 520 by operating as a common carrier without publishing a tariff showing all of its active rates and charges; (2) whether Nick International Shipping, Inc. and Olimpia Sandoval a.k.a. Marisela Cordero violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR part 515 by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission and without providing proof of financial responsibility; (3) whether, in the event violations of sections 8(a) and 19 of the 1984 Act and/or 46 CFR parts 515 and 520 are found, civil penalties should be assessed against Nick International Shipping, Inc. and Olimpia Sandoval a.k.a. Marisela Cordero and, if so, the amount of the penalties to be assessed; and (4) whether, in the event violations are found, appropriate cease and desist orders should be issued against Nick International Shipping, Inc. and Olimpia Sandoval a.k.a. Marisela Cordero.

The full text of the Order may be viewed on the Commission's home page at *www.fmc.gov* or at the Office of the Secretary, Room 1046, 800 North Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Dated: February 10, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–3588 Filed 2–18–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Coast Forwarding, LLC, 1616 Shakespeare Street, Baltimore, MD 21231. Officers: Stephen Billinghurst, Vice President (Qualifying Individual), Sean Smith, President.

Integrated Logistics Management Corporation, 7700 Irvine Center Drive, Suite #800, Irvine, CA 92618. Officer: Lisa Kuan, President (Qualifying Individual).

Central American Shipping Agency Inc., 19 Roosevelt Street, Freehold, NJ 07728. Officers: Gregory Centner, President (Qualifying Individual), Rosemary Centner, Treasurer.

Centrum Overseas Transport, Inc., 8109 Vine Wood Drive, North Richland Hills, TX 76180. Officers: Jason Hays, Secretary (Qualifying Individual), Debra Daniel, President.

Dean's International Shipping Co., Inc., 217–21 Merrick Blvd., Laurelton, NY 11413. Officer: Sharon Rose Deans, President (Qualifying Individual).

Oceanika Express, Inc., 8231 NW. 68th Street, Miami, FL 33166. Officers: Alejandrina T. Exposito, Partner (Qualifying Individual), Luis Suis Suarez, President.

Transnet Logistics, Inc., 1535 W. Walnut Parkway, Compton, CA 90220. Officer: Judy Soyeon Kim, CEO (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Global Cargo Expediters, Inc., 175–01 Rockaway Blvd., Suite 305, Jamaica, NY 11434. Officers: Scott Perroncino, Director (Qualifying Individual), Martin Huen, Vice President.

Zust Bachmeier of Switzerland, Inc., dba Vectura Ocean Lines, 3700 Commerce Drive #908, Baltimore, MD 21227. Officers: Thomas Graefe, President (Qualifying Individual), Robert M. Shoemaker, Exec. Vice President.

Horizon Auto Services, 15910 Mill Point Drive, Houston, TX 77059. Mardy Ann Schweitzer, Sole Proprietor.

United Logistics, Inc., 19921 Hinsdale Avenue, Torrance, CA 90503. Officers: (William) Tieth Ming Cheng, President (Qualifying Individual), Chia Hsiang Cheng, Treasurer.

Pasha Freight Systems, 5725 Paradise Drive, Suite 1000, Corte Madera, CA 94925. Officers: George W. Pasha, IV, President (Qualifying Individual), Dennis J. Kelly, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

AmeriCorp, Inc., 16000 Dallas Parkway, Suite 400, Dallas, TX 75248. Officers: Louis Chesley Rast, Asst. Secretary (Qualifying Individual), Gail H. Plummer, President.

Overseas Shipping, 3713 S. George Mason Dr., #1308 W., Falls Church, VA 22041. Officer: Rima R. Saleh, Owner (Qualifying Individual).

Forward Tech Logistics Inc. dba FT Logistics, 10913 N.W. 30th Street, Suite 100, Miami, FL 33172. Officer: David Gonzalez, President (Qualifying Individual).

Dated: February 12, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–3587 Filed 2–18–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are

considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 3, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Catherine Dixon Roland, Andalusia, Alabama; to retain voting shares of Southern National Corporation, and thereby indirectly retain voting shares of Covington County Bank, both of Andalusia, Alabama.

Board of Governors of the Federal Reserve System, February 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–3552 Filed 2–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. J.P. Morgan Chase & Co., New York, New York; to acquire and thereby merge with Bank One Corporation, Chicago, Illinois, and thereby indirectly acquire voting shares of Bank One, National Association, Dearborn, Michigan; Bank One Trust Company National Association, Columbus, Ohio; Bank One Delaware, National Association, Wilmington, Delaware; Bank One, National Association, Columbus, Ohio; Bank One, National Association, Chicago, Illinois.

In connection with this proposal, J.P. Morgan Chase & Co., has applied to acquire an option for up to 19.9 percent of Bank One Corporation, and Bank One Corporation has applied to acquire an option for 19.9 percent of J.P. Morgan, Chase & Co., and thereby indirectly acquire J.P. Morgan Chase Bank, New York, New York; Chase Manhattan Bank USA, National Association, Newark, Delaware, and J.P. Morgan Trust Company, National Association, Los Angeles, California.

B . Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Privee Financial, Inc., Privee LLC, and Remo DuQuoin LLC, all of Miami, Florida; to become bank holding companies by acquiring 100 percent of the voting shares of The Hemisphere National Bank, Miami, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Patriot of Tennessee Corporation, Millington, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Patriot Bank, Millington, Tennessee.

Board of Governors of the Federal Reserve System, February 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–3551 Filed 2–18–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Solicitation of nomination for one vacancy on the Secretary's Advisory Committee on Human Research Protections.

Authority: 42 U.S.C. 217a, section 222 of the Public Health Service (PHS) Act, as amended. The committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program office within the Office of Public Health and Science, DHHS, is seeking nominations of qualified candidates to be considered for appointment as a member of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of the Department of Health and Human Services (HHS) directed toward protections for human subjects in research. SACHRP was established by the Secretary of Health and Human Services on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill one position on the Committee membership that will become vacant on September 1, 2004.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on March 30, 2004, at the address listed below.

All nominations should be mailed or delivered to: Dr. Bernard Schwetz, Acting Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations will not be accepted by e-mail or by facsimile.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Slatinshek, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone: 301–496–7005.

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Slatinshek or by accessing the SACHRP Web site, *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm.*

SUPPLEMENTARY INFORMATION:

1. The Committee shall advise on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the committee will provide advice relating to the responsible conduct of research involving human subjects with particular emphasis on: Special populations, such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos, and fetuses; individuals and populations in international studies; populations in which there are individually identifiable samples, data, or information; and investigator conflicts of interest.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the Office for Human Research Protections (OHRP) and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include but are not limited to a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards (IRBs) and the institutions that sponsor research.

2. Nominations. The Office for Human Research Protections is requesting nominations to fill one position for a voting member of SACHRP. The position will become vacant on September 1, 2004. Nominations of potential candidates for consideration are being sought from a wide array of fields, including but not limited to: public health and medicine; behavioral and social sciences; health administration; biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individual selected for appointment to the Committee will serve as a voting member. The individual selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of DHHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on DHHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must state that the nominee is willing to serve as a member of SACHRP and appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: February 5, 2004.

Bernard A. Schwetz,

Executive Secretary, Secretary's Advisory Committee on Human Research Protections, Acting Director, Office for Human Research Protections.

[FR Doc. 04–3602 Filed 2–18–04; 8:45 am]

BILLING CODE 4150–36–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

Authority: 42 U.S.C. 217a, section 222 of the Public Health Services (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: Pursuant to section 10(A) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the third meeting of the Secretary's Advisory Committee on Human Research Protections (SACHRP). The meeting will be open to the public.

DATES: The meeting will be held on Monday, March 29, 2004, from 8:30 a.m. to 4:30 p.m. e.s.t., and Tuesday, March 30, 2004, from 8:30 a.m. to 4:30 p.m. e.s.t.

ADDRESSES: Holiday Inn Hotel and Suites, The Commonwealth Center, 625 First Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., Ph.D., Acting Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 496–7005, fax: (301) 402–0527, e-mail address: *sachrp@osophs.dhhs.gov* or Catherine Slatinshek, Executive Director, SACHRP Office for Human Research Protections, 1101 Wooton Parkway, Suite 200; Rockville, Maryland 20852, (301) 496–7005, fax: (301) 496–0527, e-mail address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On March 29, SACHRP will receive and discuss preliminary reports from its three subcommittees. The three subcommittees were created by SACHRP at its meeting held on July 22, 2003, to address issues related to the following three topic areas: HHS regulations and policies for research involving prisoners, HHS regulations and policies for research involving children, and the accreditation of human research protection programs by non-federal accrediting bodies. On March 30, SACHRP will hold follow-up discussions on adverse events reporting issues under HHS and FDA regulations. This topic was discussed at the Committee meeting held on December 11–12, 2003. In addition, discussions will be held to review human subjects research in international settings. These will be followed by panel discussions related to HIPAA regulations, and will

conclude with a presentation on litigation issues affecting the clinical research enterprise. The Committee also will discuss future tasks for the remainder of the year.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting on March 29 and 30, 2004. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP (contact information listed above) prior to close of business March 16, 2004.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm.*

Dated: February 12, 2004.

Bernard A. Schwetz

Acting Director, Office for Human Research Protections, and Acting Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 04–3603 Filed 2–18–04; 8:45 am]

BILLING CODE 4150–36–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "CAHPS II Reports Laboratory Experiment". This experiment will assess the impact of improved data displays on consumers' understanding and use of reports of health care quality. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 19, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Suite 5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project—"CAHPS II Reports Laboratory Experiment"

CAHPS II Reports Laboratory Experiment is designed to assess the impact of improved data displays on consumers' understanding and use of reports of health care quality and tests the impact of alternative design features. Getting consumers to pay attention to and use comparative quality information continues to be a major challenge to CAHPS and other quality reporting efforts, including efforts by the Centers for Medicare & Medicaid Services (CMS) and the National Committee for Quality Assurance (NCQA), and others. We need to learn more about ways to maximize the likelihood that consumers of health services will look at and pay attention to quality information, understand and interpret it accurately, use the information appropriately, and make "effective" choices based on the information.

This study will test the impact of alternative design features on user comprehension of available health care quality information and on its saliency to user decision-making. The study will assess ease of navigation of alternative approaches and consumers' stated preferences among the choices offered.

Study participants will be persons between 25–70 years old who have health insurance and have had a visit to a doctor in the last 12 months. The quality information presented to study participants in this laboratory experiment evaluating design alternatives will consist of mock data on consumers' assessments of the care provided by their physicians. The quality information will contain measures of physician performance, with candidate measures including how well the doctor scored on (1) listening carefully to patients; (2) giving explanations that are easy to understand; (3) spending enough time with patients; and, (4) treating patients with courtesy and respect. The quality information also will include ratings of the doctor's staff, for example, office staff that are as helpful as they should be and office staff who treat patients with courtesy and respect. Finally, the quality information will include measures of access to care, such as being able to make appointments as soon as needed, a reasonable amount of time waiting in the doctor's office, and access to extended hours of service. The exact quality measures on which we will present information will be determined during preliminary testing.

Data Confidentiality Provisions

To protect subject confidentiality, the following procedures will be employed:

- Upon arriving at the testing location and prior to participation, each subject will receive and sign the consent form, approved by the grantee's Institutional Review Board, that contains information about their rights as a subject and the measures being taken to safeguard confidentiality. A test administrator will verbally repeat and explain the information in the form at the beginning of the testing session. Subjects will be informed that their participation is voluntary and that they have the right to refuse to answer any questions or to stop participating at any point during the testing session.
- All subject materials will be marked with a unique ID number, rather than the subjects' names. Subjects' names will never be linked with their individual answers. Any information linking subject names and ID numbers will be kept in a secure location and will be accessible only to members of the project team. Subject names will not be shared with anyone outside of the project team.
- All information will be aggregated and reported at the group, rather than the individual, level.
- During portions of the testing session that will be video-taped (*i.e.*, the taping of the "choose a doctor" and comprehension questions to gather timing data), we will refer to the subjects by first name only. The videotapes will be marked with subject ID numbers and will be stored in a secure location. The tapes will be used only for analysis purposes by project team members.
- Subjects will be informed that participation is voluntary.
- All completed subject materials (*e.g.*, recruitment screeners, questionnaires, tapes, consent forms, incentive receipt forms) will be kept in a secure location accessible only to members of the project team.

• All completed questionnaires, video tapes and other subject materials will be destroyed no later than 12 months following the end of the CAHPS II project.

Methods of Collection

The data will be collected using a pencil and paper.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey	Number of respondents	Estimated time per respondent hours	Estimated total burden hours	Estimated annual cost to the government
A. Potential participants who did not enroll in study	100	.10	10	1000
B. Potential participants who did enroll in study	250	.25	62.5	6250
C. Actual number of participants in laboratory experiment (subset of B)	210	2.0	420	39500
Total (A+B)	350	1.4	492.5	46,750

Request for Comments

In accordance with the above cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 11, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–3550 Filed 2–18–04; 8:45 am]

BILLING CODE 4150–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; Notice ACYF/HS–2003–01A

AGENCY: Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF).

ACTION: Request for public comments and statements of interest on the proposed merger of Head Start Grantees in Rhode Island.

SUMMARY: This is a correction of the original notice, published on December 31, 2003, of the intent to notify interested parties of the merger of two Head Start programs in Rhode Island.

EFFECTIVE DATE: March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Renee Perthius, (202) 260–1721.

SUPPLEMENTARY INFORMATION: Self Help, Inc., and New Visions for Newport County, Inc., both in Rhode Island, are proposing to merge their federally-funded Head Start programs. This proposed merger is expected to bring about a more cost-effective and efficient service delivery to children and their families. The Head Start Bureau of the Administration for Children and Families (ACF), within the United States Department of Health and Human Services, has this proposal under consideration and is currently evaluating its effect on Head Start services for children and families in the community. Under the proposed merger, Self Help, Inc., would be absorbed by New Visions for Newport County, Inc. New Visions for Newport County, Inc., operating under the new name of East Bay Community Action Program, would provide Head Start services for the community it now serves, as well as the community now served by Self Help, Inc.

Mergers of local Head Start grantees usually require ACF to offer an open competition in the specified service area of the grantee being absorbed. While this request for a merger, without a competitive review process, is under consideration, public comments are being solicited. Additionally, this notice also serves to encourage and welcome statements of interest from any local public agency, local public school system, local non-profit agency or local for-profit organization, or local faith-based organization that would want to compete for funding to provide Head Start services in the area now served by Self Help, Inc.

New Visions for Newport County, Inc., also receives funding to conduct an Early Head Start program which, except for the name change to East Bay Community Action Program, is not a part of a proposed merger. New Visions for Newport County, Inc., renamed East Bay Community Action Program, will continue to provide Early Head Start services in the community.

The original notice notifying interested parties of the proposed merger of two Rhode Island Head Start programs was published in the **Federal Register** on December 31, 2003. That notice included the incorrect statement that Self Help, Inc., is an Early Head Start grantee. This notice is being published to correct that statement. New Visions for Newport County is the Early Head Start grantee in the community and has previously contracted-out operation of a portion of the program to Self-Help, Inc. The proposed merger will not affect New Visions' funding under the Early Head Start program.

Please mail or fax your statements of support or objection to this proposed merger and grant transfer, as well as any request for consideration by March 5, 2004, to Michelle Hastings; Pal-Tech, Inc.; 1000 Wilson Blvd., Suite 1000; Arlington, VA 22209; 1–800–458–7699; 703–243–0496 (fax).

Dated: February 12, 2004.

Joan E. Ohl,

Commissioner, Administration for Children, Youth, and Families.

[FR Doc. 04–3604 Filed 2–18–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0049]

Agency Information Collection Activities; Proposed Collection; Comment Request; Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements establishing restrictions on the import, capture, transport, sale, barter, exchange, distribution, and release of African rodents, prairie dogs, and certain other animals.

DATES: Submit written or electronic comments on the collection of information by April 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Control of Communicable Diseases; African Rodents and Other Animals That May Carry the Monkeypox Virus—21 CFR 1240.63 (OMB Control Number 0910–0519)—Extension

Under 21 CFR 1240.63(a)(2)(ii), an individual must submit a written request to seek permission to capture, offer to capture, transportation, offer to transport, sell, barter, or exchange, offer to sell, barter, or exchange, distribute, offer to distribute, and/or release into the environment any of the following animals:

- Prairie dogs (*Cynomys* sp.),
- African Tree squirrels (*Heliosciurus* sp.),
- Rope squirrels (*Funisciurus* sp.),
- African Dormice (*Graphiurus* sp.),
- Gambian giant pouched rats (*Cricetomys* sp.),
- Brush-tailed porcupines (*Atherurus* sp.),
- Striped mice (*Hybomys* sp.), or

Any other animal so prohibited by order of the Commissioner of Food and Drugs because of that animal's potential to transmit the monkeypox virus.

The request cannot seek written permission to sell, barter, or exchange, or offer to sell, barter, or exchange, as a pet, the animals listed previously or any animal covered by an order by the Commissioner of Food and Drugs.

The request must state the reasons why an exemption is needed, describe the animals involved, and explain why an exemption will not result in the spread of monkeypox within the United States.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN[1]

CFR Section	No. of Respondents	Annual Frequency per Response	Total No. of Responses	Hours per Response	Total Hours
21 CFR 1240.63(a)(2)(ii)	120	1	120	4	480
Total					480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on our experience to date with the interim final rule. To estimate the number of respondents, we examined the number of requests we have received since the June 11, 2003, order. FDA has received approximately 65 requests in a 7-month period, and most requests involved requests to move an animal from one location to another. As the agency cannot predict how the monkeypox outbreak will be resolved, FDA will tentatively estimate that 120 respondents would be affected. Furthermore, based on FDA's experience with requests submitted thus far, and the parties submitting those requests, the agency estimates that each respondent will need 4 hours to complete its request for an exemption. Therefore, the total reporting burden

under 21 CFR 1240.63(a)(2)(ii) will be 480 hours (120 respondents x 4 hours per response = 480 hours).

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3485 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0136]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Adoption of the FDA Food Code By Local, State, and Tribal Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adoption of the FDA Food Code by Local State and Tribal Governments," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 2, 2003 (68 FR 56844), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0448. The approval expires on January 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3486 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0360]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information Program on Clinical Trials for Serious or Life-threatening Diseases: Maintaining of a Databank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 22, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION:

I. Background

In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information Program on Clinical Trials for Serious or Life-threatening Diseases: Maintaining a Databank —(OMB Control Number 0910–0459)—Extension

In the **Federal Register** of March 18, 2002 (65 FR 12022), FDA issued a guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to the Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The guidance describes the following three collections of information: (1) Mandatory submissions, (2) voluntary submissions, and (3) certifications.

II. Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease and (2) is intended to assess the effectiveness of the treatment. The final guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide the following: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial. Senate 1789, "Best Pharmaceuticals for Children Act" (BPCA) (Public Law 107–109) established a new requirement for the Clinical Trials Data Bank mandated by section 113 of the Modernization Act. Information submitted to the data bank must now include "* * * a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children." The final guidance will be updated to include a discussion of how sponsors can fulfill the BPCA requirements.

III. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank.

IV. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB control number 0910–0014 until January 31, 2006, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Procedures (where and how) for the actual submission of this information to the Clinical Trials Data Bank are addressed in the guidance. The Center for Drug Evaluation and Research (CDER) received 3,957 new protocols in 2002. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds[1] are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 3,957 protocols per year is 2,638 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Fifty percent of 2,638 protocols per year is 1,319 new protocols per year subject to mandatory reporting. The remaining 2,638 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) received 910 new protocols in 2002. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 910 new protocols per year is 607 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Fifty percent of 607 protocols per year is an estimated 304 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 606 new protocols per year are subject to voluntary reporting. The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 1,319 for CDER plus 304 for CBER, or 1,623 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (4,867) minus the protocols subject to mandatory reporting requirements (1,623) will be subject to voluntary reporting, or 3,244 protocols. Our total burden estimate includes multi-center studies and accounts for the quality control review of the data before it is submitted to the data bank. The number of IND amendments submitted in 2002 for protocol changes (e.g., changes in eligibility criteria) was 4,750 for CDER and 1,646 for CBER. The number of IND amendments submitted in 2002 for new investigators was 9,419 for CDER and 1,773 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We (FDA) recognize that single submissions may include information about multiple sites. Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (9,419 CDER and 1,773 CBER). Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (3,957 CDER and 910 CBER). The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms. Based on its experience reviewing INDs, consideration of the information previously presented, and further consultation with sponsors who submit protocol information to the Clinical Trials Data Bank, FDA estimated that approximately 4.6 hours on average would be needed per response. The estimate incorporates 2.6 hours for data extraction and 2.0 hours for reformatting based on data collected from organizations currently submitting protocols to the Clinical Trials Data Bank. We considered quality control issues when developing the current burden estimates of 2.6 hours for data extraction and the 2.0 hours estimated for reformatting. Additionally, the internet-based data entry system developed by NIH incorporates features that further decrease the sponsor's time requirements for quality control procedures. The Clinical Trials Data Bank was set up to receive protocol information transmitted electronically by sponsors. Approximately 10 percent of sponsors electronically transmit information to the Clinical Trials Data Bank. If the sponsor chooses to manually enter the protocol information, the data entry system allows it to be entered in a uniform and efficient manner primarily through pull-down menus. As sponsor's familiarity with the data entry system increases, the hourly burden will continue to decrease. A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the

[1] Estimate obtained from a review of 2,062 protocols submitted to CDER between January 1, 2002, and September 20, 2002.

requirements of section 113 of the Modernization Act that will be subject to a certification submission. To date, no certifications have been received. It is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 reflects the estimate of this total burden.

In the **Federal Register** of August 25, 2003 (68 FR 51020), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received. Some of the estimates in table 1 of this document have been changed due to a miscalculation in the 60-day notice. The total burden, however, remains unchanged.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Site Closed	Total Responses	Hours per Response	Total Hours
CDER (mandatory); 1,319	1,319	1,568	3,108	3,108	10,422	4.6	47,941
CBER (mandatory); 304	304	543	585	585	2,321	4.6	10,677
CDER (voluntary); 2,638	2,638	3,182	6,311	6,311	21,080	4.6	96,968
CBER (voluntary); 606	606	1,103	1,188	1,188	4,691	4.6	21,579
Total	4,867				38,514		177,165

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe the estimate, 177,165 hours per year (38,514 responses x 4.6 hours per response) accurately reflects the burden. We recognize that companies who are less familiar with the data entry system and the Clinical Trials Data Bank will require greater than 4.6 hours per response. However, as sponsor familiarity with the system increases, the hourly estimate will decrease.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3488 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0034]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Current Good Manufacturing Practice Quality System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements related to the medical devices current good manufacturing practice (CGMP) quality system (QS) regulation (CGMP/QS regulation).

DATES: Submit written and electronic comments on the collection of information by April 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Current Good Manufacturing Practice (CGMP) Quality System (QS) Regulations—21 CFR Part 820 (OMB Control Number 0910–0073)—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services (the Secretary) has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to CGMP, as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/QS regulation implementing the authority provided by this statutory provision is found at part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under the act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems. Requirements are compatible with specifications in international quality standards, ISO (International Organization for Standardization) 9001 entitled "Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing." CGMP/QS information collections will assist FDA inspections of manufacturer compliance with quality system requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review these topics: The quality policy, the organizational structure, the quality plan, and the quality system procedures of the organization. Section 820.22 requires the conduct and documentation of quality system audits and reaudits. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j) requires, in the following respective order, the establishment, maintenance, and/or documentation of these topics: (1) Procedures to control design of class III and class II devices, and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes.

Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance and documentation of required records (documents) and changes to those records.

Section 820.50(a)(1), (a)(2), (a)(3), and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a)(1) through (a)(5), (b) through (e), (g)(1) through (g)(3), and (h) and (i) requires the establishment, maintenance, and/or documentation of these topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings; procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a) and (b)(1) and (b)(2)and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of these topics: (1) Equipment calibration and inspection procedures; (2) national, international or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of these topics: (1) Procedures for incoming acceptance by inspection, test or other verification; (2) procedures for ensuring that in-process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1),(b)(2), and 820.100 require, respectively, the establishment, maintenance and/or documentation of these topics: (1) Procedures for identifying, recording, evaluating and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures

for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records; investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and, (4) appropriate distribution and managerial review of corrective and preventive action information.

Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a) and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of these topics: (1) Procedures for controlling and recording the storage, examination, release and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records: (1) That are retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; (2) that are contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) that are contained in DHRs, demonstrate the manufacture of each unit, lot or batch of product in conformance with DMR and regulatory requirements, and include manufacturing and distribution dates and quantities, acceptance documents, labels and labeling, and control numbers; and (4) that are contained in a quality system record (QSR) consisting of references, documents, procedures and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) and (d), respectively, require the establishment, maintenance and/or documentation of these topics: (1) Complaint files and procedures for receiving, reviewing and evaluating complaints; (2) complaint investigation records identifying the device, complainant and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, that are written and based on a valid statistical rationale, and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation amends and revises the CGMP requirements for medical devices set out at part 820. It adds design and purchasing controls; modifies previous critical device requirements; revises previous validation and other requirements; and harmonizes device CGMP requirements with quality system specifications in the international standard, ISO 9001:1994 entitled "Quality Systems—Model for Quality Assurance in Design, Development Production, Installation and Servicing." The rule does not apply to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation.

The rule imposes burdens upon finished device manufacturer firms, which are subject to all recordkeeping requirements, and also upon finished device contract manufacturer, specification developer, repacker and relabeler, and contract sterilizer firms, which are subject only to requirements applicable to their activities. Due to modifications to the guidance given for remanufacturers of hospital single-use devices, reusers of hospital single-use devices will now be considered to have the same requirements as manufacturers in regard to this regulation. The establishment, maintenance and/or documentation of procedures, records and data required by this regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

If FDA did not impose these recordkeeping requirements, it anticipates that design-related device failures would continue to occur in the same numbers as before and continue to result in a significant number of device recalls and preventable deaths and serious injuries. Moreover, manufacturers would be unable to take advantage of substantial savings attributable to reduced recall costs, improved manufacturing efficiency, and improved access to international markets through compliance with CGMP requirements that are harmonized with international quality system standards.

The CGMP/QS regulation applies to some 8,254 respondents. These recordkeepers consist of 8,188 original respondents and an estimated 66 hospitals which remanufacture or reuse single use medical devices. They include manufacturers, subject to all requirements and contract manufacturers, specification developers, repackers/relabelers and contract sterilizers, subject only to requirements applicable to their activities. Hospital remanufacturers of single use medical devices (SUDs) are now defined to be manufacturers under guidelines issued by FDA's Center for Devices and Radiological Health's (CDRH) Office of Surveillance and Biometrics. Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. The regulation contains additional recordkeeping requirements in such areas as design control, purchasing, installation, and information relating to the remanufacture of single use medical devices. The estimates for burden are derived from those incremental tasks that were determined when the new CGMP/QS regulation became final as well as those carry-over requirements. The carry-over requirements are based on decisions made by the agency on July

16, 1992, under OMB PRA submission number 0910–0073. This still provides valid baseline data.

FDA estimates respondents will have a total annual recordkeeping burden of approximately 2,833,020 hours. This figure also consists of approximately 143,052 hours spent on a startup basis by 650 new firms.

FDA estimates information collection burdens imposed as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Number of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours	Total Operating & Maintenance Cost
820.20(a)	8,254	1	8,254	6.58	54,311	
820.20(b)	8,254	1	8,254	4.43	36,565	
820.20(c)	8,254	1	8,254	6.17	50,927	
820.20(d)	8,254	1	8,254	9.89	81,632	
820.20(e)	8,254	1	8,254	9.89	81,632	
820.22	8,254	1	8,254	32.72	270,071	
820.25(b)	8,254	1	8,254	12.68	104,661	
820.30(a)(1)	8,254	1	8,254	1.75	14,445	
820.30(b)	8,254	1	8,254	5.95	49,111	
820.30(c)	8,254	1	8,254	1.75	14,445	
820.30(d)	8,254	1	8,254	1.75	14,445	
820.30(e)	8,254	1	8,254	23.39	193,061	
820.30(f)	8,254	1	8,254	37.42	308,865	
820.30(g)	8,254	1	8,254	37.42	308,865	
820.30(h)	8,254	1	8,254	3.34	27,568	
820.30(i)	8,254	1	8,254	17.26	142,464	
820.30(j)	8,254	1	8,254	2.64	21,791	
820.4	8,254	1	8,254	8.91	73,543	
820.40(a) through (b)	8,254	1	8,254	2.04	16,838	
820.50(a)(1) through (a)(3)	8,254	1	8,254	21.9	180,763	$1,181,925
820.50(b)	8,254	1	8,254	6.02	49,689	
820.60	8,254	1	8,254	0.32	2,641	
820.65	8,254	1	8,254	0.67	5,530	
820.70(a)(1) through (a)(5)	8,254	1	8,254	1.85	15,270	
820.70(b) through (c)	8,254	1	8,254	1.85	15,270	
820.70(d)	8,254	1	8,254	2.87	23,689	
820.70(e)	8,254	1	8,254	1.85	15,270	
820.70(g)(1) through (g)(3)	8,254	1	8,254	1.43	11,803	
820.70(h)	8,254	1	8,254	1.85	15,270	
820.70(i)	8,254	1	8,254	7.5	61,905	
820.72(a)	8,254	1	8,254	4.92	40,610	
820.72(b)(1) through (b)(2)	8,254	1	8,254	1.43	11,803	
820.75(a)	8,254	1	8,254	2.69	22,203	
820.75(b)	8,254	1	8,254	1.02	8,419	
820.75(c)	8,254	1	8,254	1.11	9,162	
820.80(a) through (e)	8,254	1	8,254	4.8	39,619	
820.86	8,254	1	8,254	0.79	6,521	
820.90(a)	8,254	1	8,254	4.95	40,857	
820.90(b)(1) through (b)(2)	8,254	1	8,254	4.95	40,857	
820.100(a)(1) through (a)(7)	8,254	1	8,254	12.48	103,010	
820.100(b)	8,254	1	8,254	1.28	10,565	
820.120	8,254	1	8,254	0.45	3,714	
820.120(b)	8,254	1	8,254	0.45	3,714	
820.120(d)	8,254	1	8,254	0.45	3,714	
820.130	8,254	1	8,254	0.45	3,714	
820.140	8,254	1	8,254	6.34	52,330	
820.150(a) through (b)	8,254	1	8,254	5.67	46,800	
820.160(a) through (b)	8,254	1	8,254	0.67	5,530	
820.170(a) through (b)	8,254	1	8,254	1.5	12,381	
820.180(b) through (c)	8,254	1	8,254	1.5	12,381	
820.181(a) through (e)	8,254	1	8,254	1.21	9,987	
820.184(a) through (f)	8,254	1	8,254	1.41	11,638	
820.186	8,254	1	8,254	0.4	3,302	
820.198(a) through (c)	8,254	1	8,254	4.94	40,775	
820.200(a) and (d)	8,254	1	8,254	2.61	21,543	
820.250	8,254	1	8,254	0.67	5,530	
Totals					2,833,020	$1,181,925

[1] There are no capital costs associated with this collection of information.

Burden (labor) hour and cost estimates were originally developed under FDA contract by Eastern Research Group, Inc. (ERG), in 1996 when the CGMP/QS regulation became final. These figures are still accurate.

Additional factors considered in deriving estimates included:

• Establishment type: Query has been made of CDRH's registration/listing databank and has counted 8,188 domestic firms subject to CGMPs. In addition, hospitals which reuse or remanufacture devices are now considered manufacturers under new FDA guidance. During the last report, it was estimated that out of the 6,000 hospitals in the United States, one third of them (or 2,000 hospitals) will reuse or remanufacture single use medical devices. After investigations of many hospitals and the changes in enforcements of FDA's requirements for hospitals, the number of reuse or remanufactures of single-use medical devices have decreased from the estimated 2,000 to an estimated 66 hospitals. Thus, the number of manufacturers will increase from 7,229 to 8,188, but the total number of firms subject to CGMPs will decrease from 9,229 to 8,254.

• Potentially affected establishments: Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to FDA's quality policy regulations (§ 820.20(a)), document control regulations (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to FDA's design controls regulations (§ 820.30). The type of firm subject to each requirement was identified by ERG.

FDA estimated the burden hours (and costs) for the previous CGMP regulation in 1992. That estimate was submitted to OMB on May 4, 1992. It was approved by OMB on July 16, 1992, and expired on June 30, 1995. The methodology used is different than that used by ERG in estimating incremental tasks when the new CGMP/QS became final. Nevertheless, the agency believes its 1992 estimate adequately represents labor hours (and costs) needed to comply with previous CGMP requirements carried over into the new CGMP/QS regulation. The 1992 estimate used 9,289 respondents (rather than 8,254 respondents), which compensates for differences in methodology.

FDA estimates that some 650 "new" establishments (marketing devices for the first time) will expend some 143,052 "development" hours on a one-time startup basis to develop records and procedures for the CGMP/QS regulation.

FDA estimates that annual labor hours are apportioned as follows: 40 percent goes to requirements dealing with manufacturing specifications, process controls and the DHR; 20 percent goes to requirements dealing with components and acceptance activities; 25 percent goes to requirements dealing with equipment, records (the DMR and QSR), complaint investigations, labeling/packaging and reprocessing/investigating product nonconformance; and 15 percent goes to quality audit, traceability, handling, distribution, statistical, and other requirements.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3646 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004F–0066]

zuChem, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that zuChem, Inc. has filed a petition proposing that the food additive regulations be amended to permit the manufacture of mannitol by fermentation of sugars such as fructose, glucose, or maltose by the action of the microorganism *Lactobacillus intermedius* (*fermentum*).

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3423.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4754) has been filed by zuChem Inc., c/o Hyman, Phelps and McNamara, P.C., 700 Thirteenth St. NW., Washington, DC 20005. The petition proposes to amend the food additive regulations in § 180.25 Mannitol (21 CFR 180.25) to permit the manufacture of mannitol by fermentation of sugars such as fructose, glucose, or maltose by the action of the microorganism *Lactobacillus intermedius* (*fermentum*).

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 9, 2004.

George H. Pauli,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–3558 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Subcommittee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2004, from 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the following topics: (1) Safety monitoring in clinical studies enrolling children with cancer, and (2) the use of nonclinical data to supplement clinical data for evaluation of cancer therapies.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by March 10, 2004. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. and between

approximately 2:30 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 10, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Beverly O'Neill at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 12, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–3645 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2004, from 1 p.m. to 5 p.m.

Location: Food and Drug Administration, 8800 Rockville Pike, Bldg. 29B, Conference Room C, Bethesda, MD. This meeting will be held by a telephone conference call. The public is welcome to attend the meeting at the previously mentioned location. A speaker telephone will be provided at the specified location for public participation in this meeting.

Contact Person: William Freas or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluations and Research (HFM–71), 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: This committee will discuss recommendations pertaining to the influenza virus vaccine formulation.

Procedure: On March 17, 2004, from 1 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 11, 2004. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 11, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public as its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–3487 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1993D–0398]

Guidance for Industry: Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#52) entitled "Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora." This guidance is a revision of the guidance document #52 entitled "Microbiological Testing of Antimicrobial Drug Residues in Food," which was implemented in 1996. In this guidance, the agency recommends a pathway approach for assessing the microbiological safety of antimicrobial drug residues in food, rather than the approach described in the 1996 version of the guidance. The agency's decision to revise this guidance is based on new information available to the agency.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Haydee Fernandez, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6981, e-mail: *afernand@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 27, 2001 (66 FR 66910), FDA published a notice of availability for a draft guidance document entitled "Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora." The agency gave interested persons until March 27, 2002, to comment on the draft guidance. FDA received several comments that were considered in the preparation of this guidance document. This guidance replaces former guidance #52 entitled "Microbiological Testing of Antimicrobial Drug Residues in Food." A document entitled "History and Scientific Issues Related to Guidance #52" provides the scientific rationale for the revisions made (Docket No. 93D–0398).

CVM is aware that the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) is currently drafting a related guideline and that this guidance may be superceded at a future date by the guideline published by VICH.

II. Paperwork Reduction Act of 1995

FDA is announcing that a collection of information entitled "Guidance for Industry: Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. In the **Federal Register** of March 4, 2003 (68 FR 10253), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. According to the Paperwork Reduction Act of 1995, a collection of information should display a valid OMB control number. The valid OMB control number for this information collection is 0910–0521. It expires on January 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

III. Significance of Guidance

This level 1 guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

V. Electronic Access

Persons with access to the Internet may obtain a copy of the guidance document entitled "Guidance for Industry: Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora" from FDA's CVM home page at *http://www.fda.gov/cvm.*

Dated: October 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3557 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for Ciloxan (ciprofloxacin ophthalmic), Brevibloc (esmolol), Flovent (fluticasone), Fludara (fludarabine), Fosamax (alendronate), Lotensin (benazepril), Malarone (atovaquone and proguanil), Xenical (orlistat), and Ocuflox (ofloxacin ophthalmic). The summaries are being made available consistent with section 9 of the Best Pharmaceuticals for Children Act (BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: The summaries are available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace N. Carmouze, Center for Drug Evaluation and Research (HFD–960), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, *CarmouzeG@cder.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for Ciloxan (ciprofloxacin ophthalmic), Brevibloc (esmolol), Flovent (fluticasone), Fludara (fludarabine), Fosamax (alendronate), Lotensin (benazepril), Malarone (atovaquone and proguanil), Xenical (orlistat), and Ocuflox (ofloxacin ophthalmic). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this

provision of the BPCA, FDA has posted on the Internet (*http://www.fda.gov/cder/pediatric/index.htm*) summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for Ciloxan (ciprofloxacin ophthalmic), Brevibloc (esmolol), Flovent (fluticasone), Fludara (fludarabine), Fosamax (alendronate), Lotensin (benazepril), Malarone (atovaquone and proguanil), Xenical (orlistat), and Ocuflox (ofloxacin ophthalmic). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm.*

Dated: February 12, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3644 Filed 2–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Presidential Initiative Application Forms for Funding Opportunities—In Use Without Approval

The Consolidated Health Center Program is administered by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). Grant funding opportunities are provided for Health Centers under the Presidential Initiative to expand health centers. These funding opportunities use the following applications: New Access Point Funding (NAP), Service Area Competition (SAC), the Expanded Medical Capacity (EMC) for Consolidated Health Centers and the Service Expansion (SE). These application forms are used by new and current Health Centers to apply for funding.

The five-year President's Initiative to Expand Health Centers will significantly impact 1,200 of the Nation's neediest communities by creating new health center sites. Additional emphasis will be given to improving and strengthening existing sites and expanding existing centers.

BPHC will assist in achieving the Initiative through the various funding opportunities under this Initiative. This year's funding increase supported the development of an additional 100 new access points and 88 significantly expanded access points. New access points will be established by Health Centers targeting the neediest communities using successful Center models. Expanded capacity will be targeted to communities where an existing Health Center's ability to provide care falls short of meeting the full need for services to uninsured and underserved populations. Funding will be provided to Health Centers to support the staff needed to serve a substantial increase in users.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Hours per response	Total burden hours
NAP	500	60	30,000
SAC	250	50	12,500
EMC	225	25	5,625
SE	450	25	11,250
Total	1,425		59,375

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 12, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–3647 Filed 2–18–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection

Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c) (2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Proposed Project: The Smallpox Vaccine Injury Compensation Program (OMB No. 0915–0282)—Extension

The Smallpox Emergency Personnel Protection Act (SEPPA) authorized the Secretary of Health and Human Services to establish The Smallpox Vaccine Injury Compensation Program, which is designed to provide benefits and/or compensation to certain persons harmed as a direct result of receiving smallpox covered countermeasures, including the smallpox vaccine, or as a direct result of contracting vaccinia through certain accidental exposures.

The benefits available under the Program include compensation for medical care, lost employment income, and survivor death benefits. To be considered for Program benefits, requesters (*i.e.*, smallpox vaccine recipients, vaccinia contacts, survivors, or the representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), or persons filing on their behalf as their representatives, must file a Request Form and the documentation required under this regulation to show that they are eligible.

Requesters must submit appropriate documentation to allow the Secretary to determine if the requesters are eligible for Program benefits. This documentation will vary somewhat depending on whether the requester is filing as a smallpox vaccine recipient, a vaccinia contact, a survivor, or a representative of an estate. All requesters must submit medical records sufficient to demonstrate that a covered injury was sustained by a smallpox vaccine recipient or a vaccinia contact.

The burden estimate is as follows:

Form	Number of respondents	Responses per respondent	Hourly response	Total burden hours
Request Form	1,250	1	5	6,250
Certification	1,250	1	1	1,250
Total	2,500			7,500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: February 12, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–3648 Filed 2–18–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; Revision of OMB No. 0925–0001/exp. 05/31/04, "Research and Research Training Grant Applications and Related Forms"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Research and Research Training Grant Applications and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925–001, Expiration Date 5/31/04. Form Numbers: PHS 398, 2590, 2271, 3734 and HHS 568. *Need and Use of Information Collection:* The application is used by applicants to request Federal assistance for research and research-related training. The other related forms are used for trainee appointment, final invention reporting, and to relinquish rights to a research grant. *Frequency of response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed. *Affected Public:* Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 122,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 8.5; and *Estimated Total Annual Burden Hours Requested:* 1,032,439. The estimated annualized cost to respondents is $49,245,180.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Mikia Currie, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or E-mail your request, including your address to: [*curriem@od.nih.gov*]

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: February 11, 2004.

Joe Ellis,

Acting Director, OPERA, OER, National Institutes of Health.

[FR Doc. 04–3525 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

2-Amino-O⁴-Substituted Pteridines and Their Use as Inactivators of O⁶-Alkylguanine-DNA Alkyltransferase

Robert C. Moschel *et al.* (NCI)

DHHS Reference No. E–274–2003/0–US–01 filed 06 Jan 2004

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*

This invention is directed to 2-amino-O⁴-benzylpteridine derivatives targeted for use in cancer treatment in combination with chemotherapeutic agents such as 1,3-bis(2-chloroethyl)-1-nitrosurea (BCNU) or temozolomide. The derivatives of the present invention inactivate the O⁶-alkylguanine-DNA-alkyltransferase repair protein and thus enhance activity of such chemotherapeutic agents. Examples of these derivatives have advantages over the earlier O⁶-benzylguanine compounds from this research group. Some compounds of the current invention are more water soluble compared to O⁶-benzylguanine and they exhibit greater specificity for inactivating O⁶-alkylguanine-DNA-alkyltransferase in certain tumor cells, compared to normal cells.

Interference With *c-maf* Function in Multiple Myeloma Retards Tumor Adherence and Progression and Decreases Expression of Integrin β7, C-C Chemokine Receptor 1, and Cyclin D2

Louis Staudt *et al.* (NCI)

DHHS Reference No. E–173–2003/0-PCT–01 filed 17 Oct 2003

Licensing Contact: Catherine Joyce; 301/435–5031; e-mail: *joycec@mail.nih.gov*

Multiple myeloma (MM) is an incurable malignancy of the plasma cell that accounts for 20% of all hematologic malignancies. It has been shown that there are recurrent genetic lesions associated with the disease. One of the recurrent lesions, occurring in approximately 5–10% of the cases, is a translocation involving the *c-maf* gene which results in overexpression of the *c-maf* gene.

Unexpectedly, the inventors have found that overexpression of the *c-maf* gene is more frequent than the occurrence of the genetic lesion, with approximately 50% of MM samples showing overexpression of *c-maf*. Additionally, the inventors have shown that the interference with *c-maf* function markedly decreases expression of integrin β7, C-C chemokine receptor1, and cyclin D2. The inventors have also demonstrated that decreased expression of integrin β7 markedly decreases the ability of tumor cells to bind to bone marrow stroma and that the proliferation of myeloma cells was slowed significantly by the inhibition of *c-maf* expression. Therefore, *c-maf* appears to play a central role in regulating the proliferation and survival of tumor cells in MM.

The above-mentioned invention is available for licensing on an exclusive or a non-exclusive basis.

Glioma-Selective Polypeptides, Alone or Coupled to a Therapeutic/Diagnostic Agent, Compositions Comprising Same, and Uses Thereof

Howard A. Fine (NCI), Benjamin Purow (CC)

U.S. Provisional Application No. 60/509,737 filed 08 Oct 2003 (DHHS Reference No. E–244–2002/0–US–01)

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*

Primary brain tumors are an important cause of cancer mortality in the U.S., representing the leading cause of cancer-related death in children and the fourth leading cause of cancer-related death in young adults. Progress in the treatment of these tumors has been slow, since the demonstration of more than 20 years ago that fractionated radiotherapy could significantly extend survival. Although improved neurosurgical techniques have lessened the morbidity of extensive resections, the impact of such procedures on the overall survival of patients with the most malignant gliomas remains modest, at best, given the diffuse infiltrative nature of the tumor. Chemotherapy recently has been demonstrated to have some activity for specific subtypes of malignant gliomas, such as oligodendrogliomas and anaplastic astrocytomas. The effectiveness, however, of standard chemotherapy for the most common and malignant of the gliomas, glioblastoma, is marginal at best. Clearly, novel therapeutic approaches and novel drug targets are needed. In view of the foregoing, it is an object of the present invention to provide new agents and compositions that can be used in the diagnosis and treatment of glioma. This and other objects and advantages of the present invention, as well as additional inventive features, will be apparent from the detailed description provided in the patent application.

The present invention relates to glioma-selective polypeptides, which can be used alone or coupled to a therapeutic or diagnostic agent, in the diagnosis and therapy of glioma. Also provided by the present invention is a composition comprising the above-described polypeptide, desirably coupled to a diagnostic agent or a therapeutic agent, and a carrier.

Additionally, a method of diagnosing glioma in an animal is provided. The method comprises administering to the animal a polypeptide coupled to a diagnostic agent as described above, or a composition comprising same and a carrier therefore, and assaying for the presence of the diagnostic agent in the central nervous system (CNS). The presence of the diagnostic agent in the CNS is indicative of the presence of glioma in the animal.

A method of inhibiting the proliferation of a glioma cell in an animal having a glioma is also provided. The method comprises administering to the animal in an amount sufficient to inhibit the proliferation of the glioma cell in the animal a polypeptide coupled to a therapeutic agent as described above, or a composition comprising the same and a carrier, whereupon the proliferation of the glioma cell in the animal is inhibited.

Brother of the Regulator of Imprinted Sites (BORIS)

Victor Lobanenkov *et al.* (NIAID)

U.S. Provisional Application No. 60/358,889 filed 22 Feb 2002 (DHHS Reference No. E–227–2001/0–US–01);

PCT Application No. PCT/US03/05186 filed 21 Feb 2003 (DHHS Reference No. E–227–2001/0–PCT–02)

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*

The subject application discloses an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence encoding a human or a non-human BORIS, or a fragment of either of the foregoing; an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence that is complementary to a nucleotide sequence encoding a human or a non-human BORIS, or a fragment of either of the following; a vector comprising such an isolated or purified polypeptide molecule consisting essentially of an amino acid sequence encoding a human or a non-human BORIS, or a fragment or either of the foregoing; a cell line that produces a monoclonal antibody that is specific for an aforementioned isolated or purified polypeptide molecule; and the monoclonal antibody produced by the cell line; methods of diagnosing a cancer or a predisposition to a cancer in a male or female mammal; a method of prognosticating a cancer in a mammal; a method of assessing the effectiveness of treatment of a cancer in a mammal; a method of treating a mammal prophylactically or therapeutically for a cancer; and a composition comprising a carrier and an inhibitor of BORIS.

Use of IL–13 Inhibitors To Prevent Tumor Recurrence

Jay Berzofsky *et al.* (NCI).

PCT Application No. PCT/US01/51339 filed 22 Oct 2001 (DHHS Reference No. E–037–2001/1–PCT–02).

Licensing Contact: Catherine Joyce; 301/435–5031; e-mail: *joycec@mail.nih.gov*

This invention relates to the discovery of a role for IL–13 in the down-regulation of tumor immunosurveillance. Using a mouse model in which tumors show a growth-regression-recurrence pattern, the mechanisms for down-regulation of cytotoxic T lymphocyte-mediated tumor immunosurveillance was investigated. It was discovered that interleukin 4 receptor (IL–4R) knockout mice, and downstream signal transducer and activator of transcription 6 (STAT6) knockout mice, but not IL–4 knockout mice, resisted tumor recurrence. Thus, IL–13, the only other cytokine that uses the IL–4R-STAT6 pathway, was discovered to have a role in the down-regulation of tumor immunosurveillance. The use of an IL–13 inhibitor confirmed these results. Additionally, loss of natural killer T cells (NKT cells) in CD1 knockout mice resulted in decreased IL–13 production and resistance to recurrence. Therefore, NKT cells and IL–13, possibly produced by NKT cells and signaling through the IL–4R-STAT6 pathway, are necessary for down-regulation of tumor immunosurveillance. Thus, the inventors have discovered a method of inhibiting tumor growth which comprises the administration of an IL–13 inhibitor. This invention is described in PCT application, PCT Publication No. WO 02/055100.

This technology is available for licensing on a non-exclusive basis.

Interleukin-2 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

Michael J. Lenardo (NIAID).

U.S. Patent 6,083,503 issued 07 Jul 2000 (DHHS Reference No. E–137–1991/0–US–03); U.S. Patent 5,989,546 issued 23 Nov 1999 (DHHS Reference No. E–137–1991/0–US–04).

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*

T-cell apoptosis induced by administration of IL–2 and antigen offers an important new treatment for allergic disorders, which are due to the effects of antigen-activated T-cells. Antigen-activated T-cells cause the release of harmful lymphokines and the production of immunoglobulin E by B cells. Presently available methods for treating allergies have limitations because they are nonspecific in their action and have side effects and limited efficacy. IL–2 and antigen stimulates the programmed death of only antigen-specific T-cells while leaving the rest of the patient's T-cells and other immune cells intact. This invention is also useful in treating HIV. Both fields of use, allergies and HIV, are available for licensing.

Interleukin-4 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

Michael J. Lenardo, Stefen A. Boehme, Jeffrey Critchfield (NIAID).

U.S. Patent 5,935,575 issued 10 Aug 1999 (DHHS Reference No. E–151–1992/0–US–11).

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*

The discovery that interleukin-4 (IL–4) predisposes T lymphocytes to programmed cell death (apoptosis) allows for a novel method of therapeutic intervention in diseases caused by the action of IL–4-responsive T cells. Specifically, the therapy induces the death of a subpopulation of T lymphocytes that are capable of causing disease. Current therapies may cause general death or suppression of immune responses involving T-cells, severely comprising a patient's immune system. This treatment affects only the subset of T cells that react with a specified antigen, thereby leaving a patients immune system uncompromised. This invention is useful in treating allergies and HIV complications. Both fields are available for licensing.

Dated: February 9, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–3526 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SPATIAL for Altering Cell Proliferation

Ronald E. Gress, Francis A. Flomerfelt (NCI).

PCT Application No. PCT/US03/36874 filed 18 Nov 2003 (DHHS Reference No. E–177–2003/0–PCT–01).

Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov.*

The present invention provides methods useful for altering cell proliferation by modifying SPATIAL, a gene expressed predominantly in thymus and lymph node, activity in cells. In some methods the thymocyte numbers in subjects with disease-associated immunodeficiencies are increased by administering an agent that inhibits SPATIAL activity. Other methods include but are not limited to increasing thymocyte number in a subject by administering an agent that interferes with an interaction between SPATIAL and Uba3.

Methods for the Treatment of Parkinson's Disease and Other alpha-synucleinopathies

M. Maral Mouradian and Eunsung Junn (NINDS)

U.S. Provisional Application No. 60/444,563 filed 02 Feb 2003 (DHHS Reference No. E–091–2003/0–US–01)

Licensing Contact: Norbert Pontzer; (301) 435–5502, *pontzern@mail.nih.gov*

Parkinson's disease (PD) is a neurodegenerative disorder characterized by the loss of dopaminergic neurons in the substantia nigra pars compacta. During the course of the disease, proteinaceous cytoplasmic inclusions known as Lewy bodies appear in the dopaminergic neurons. Several lines of evidence point to a key role for alpha-synuclein, a major constituent of Lewy bodies, in the pathogenesis of these disorders. In particular, the aggregation of this protein is believed to be deleterious to neurons. These inventors have now discovered that transglutaminase 2, also referred to as tissue transglutaminase, catalyzes alpha-synuclein cross-linking in vitro and in cultured cells. Evidence for the activity of this enzyme is also provided within the Lewy bodies in Parkinson's patients. The present invention provides novel methods for the treatment of Parkinson's disease and other alpha-synucleinopathies with inhibitors of transglutaminase, which can inhibit aggregation of alpha-synuclein. Also provided are screening assays for novel inhibitors of transglutaminase that may be used in the treatment of Parkinson's disease and other alpha-synucleinopathies. Further information may be found in Junn *et al.*, PNAS 2003 100(4): 2047–2052.

Dated: February 10, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–3527 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: March 4, 2004.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, Room 1066, Bethesda, MD 20817–4874, (301) 435–0965, *petrakoe@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3520 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Role of Icosanoids in Renal Function.

Date: March 9, 2004.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, PhM, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Mitochondrial Dysfunction: Role in Metabolic Syndrome.

Date: March 22, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Obesity/Energy Balance.

Date: April 15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Training Applications.

Date: April 19, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, PhM, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3500 Filed 2–18–04; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Maternal Opioid Treatment.

Date: March 3, 2004.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

This notice is being published less than 15 days prior to the meeting due to the time limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Training and Career Development Subcommittee.

Date: March 10, 2004.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 451–4530

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3501 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A.

Date: March 8–9, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at Chevy Chase Pavilion, 5300 Military Road, NW., Washington, DC 20015.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3503 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Research Centers in Trauma, Burn, and Perioperative Injury.

Date: March 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Brian R Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18K, Bethesda, MD 20892, 301–594–3907, *pikbr@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88,

Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3504 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review committee, MBRS Review Subcommittee B.

Date: March 15–16, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Rebecca H Johnson, PhD, Office of Scientific review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3505 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Development of High Resolution Probes for Cellular Imaging.

Date: March 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: N. Kent Peters, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 18ANK, Bethesda, MD 20892, (301) 594–2408, *petersn@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3506 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: March 15–26, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3507 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Anesthesiology.

Date: March 8–9, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Majestic, 1500 Sutter Street, San Francisco, CA 94109.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3508 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Concept Clearance—"Reducing Crash Risk among Novice Young Driver".

Date: March 10, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3509 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Macrophage Regulation of Angiogenesis in Endometriosis.

Date: March 1, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3510 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Developmental Biology Subcommittee.

Date: March 11–12, 2004,

Time: 8 a.m. to 3 p.m.,

Agenda: To review and evaluate grant applications.

Place: Four Points Hotel (Sheraton), 1201 K Street, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National

Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3511 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Prenatal Events-Postnatal Consequences.

Date: March 9, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3512 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Metabolic Requirements for Oogenesis and Embryogenesis.

Date: March 9, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3513 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RCT of Fluconazole and Steroids for Vulvar Vestibulitis.

Date: March 11, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3514 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Role of HCN Channels in GnRH Secretion in GTI–7 Cells.

Date: March 10, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3515 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 15–16, 2004.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg, Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3516 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Family, Parenting and Child Related Applications.

Date: March 9, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Treatment Studies.

Date: March 15, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research training, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3517 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Anxiety/Mood Disorders Conte Centers.

Date: March 10–11, 2004.
Time: 9 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Peter J. Sheridan, PhD, Scientist Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Conte Centers for the Study of Circadian Rhythms, Synapse Formation, and Gonadal Hormones.
Date: March 12, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Houmam H Araj, PhD, Scientist Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1340, *hara@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Conflicts.
Date: March 15, 2004.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Marina Broitman, PhD, Scientist Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Conte Centers for the Study of Schizophrenia.
Date: March 16–17, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Perinatal Women and Child.
Date: March 17, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Treatments for Schizophrenia and Psychotic Disorders.
Date: March 22, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Premiere at Tyson's Corner, 8661 Leesburg Pike, Vienna, VA 22182.
Contact Person: Susan M. Matthews, BA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Services A&D.
Date: March 23, 2004.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Adult Treatment›
Date: April 8, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3518 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.
Date: March 14–16, 2004.
Closed: March 14, 2004, 8 p.m. to 9:30 p.m.
Agenda: To review and evaluate programmatic and personnel issues.
Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.
Open: March 15, 2004, 8:30 a.m. to 5 p.m.
Agenda: An overview of the organization and conduct of research in the Laboratory of Computational Biology & Risk Analysis and Laboratory of Experimental Pathology.
Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.
Closed: March 16, 2004, 8:30 a.m. to adjournment.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.
Contact Person: Steven K. Akiyama, PhD., Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from

Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3519 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 11–12, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH, 6700 Rockledge Drive, Rm 3130, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3521 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, CMV Related Hearing Loss.

Date: March 15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, (301) 496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3523 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

Name of Committee: NIH Recombinant DNA Advisory Committee (RAC).

Dates: March 9–11, 2004.

Times:

March 9, 2004, 1 p.m. to 6 p.m.
March 10, 2004, 8 a.m. to 6 p.m.
March 11, 2004, 8 a.m. to 3 p.m.

Agenda: Review of human gene transfer protocols for use of: (1) Beta-nerve growth factor (NGF) in Alzheimer's Disease; (2) conditionally replication-competent adenovirus in glioma and (3) in ovarian and extraovarian cancer; (4) an oncolytic Double-Deleted Vaccinia Virus (double deletion of the thymidine kinase and vaccinia growth factor genes and insertion of cytosine deaminase and somatostatin receptor cDNAs) into superficial injectable tumors; (5) Streptococcus mutans lactic acid-deficient effector strain (A2JM) as an aid in the protection against dental caries; and (6) adenylyl cyclase VI gene transfer for Congestive Heart Failure. The RAC meeting also includes the Data Management report, an update on OBA protocol #0104–469 entitled: "Subthalamic GAD Gene Transfer in Parkinson Disease Patients Who Are Candidates for Deep Brain Stimulation" presented by Dr. Michael Kaplitt, New York Hospital-Weill Medical College of Cornell University, New York, NY and Dr. Mathew J. During, and a discussion of investigator responses to RAC recommendations as required by Appendix M–I–C–1 of the NIH Guidelines.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3524 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Nutritional Metabolism.

Date: February 18, 2004.

Time: 8 a.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sooja K. Kim, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Children and Exposure to Domestic Violence.

Date: February 24, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperthermia and Immune Responses.

Date: February 24, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *shauhung@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Mind-Body Support Programs.

Date: February 26, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Studies on RNA Viruses.

Date: March 2, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD, 21231.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Drug Development and Therapeutics.

Date: March 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7804, Bethesda, MD 20892, (301) 496–8551, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain: Imaging.

Date: March 10, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Health Behavior Interventions.

Date: March 11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Claire E Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Instrumentation and Systems Development Study Section.

Date: March 11–12, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, (301) 435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Parasite/Vector.

Date: March 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial and Fungal Pathogenesis.

Date: March 11–12, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tera Bounds, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 301–D, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Infectious Diseases and Microbiology.

Date: March 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: March 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience ZRG1 BDCN–E (10) SBIR.

Date: March 11–12, 2004.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population SBIR/STTR Study Section.

Date: March 11–12, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F31 Pre-Doctoral Minorities/Disabilities.

Date: March 11–12, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hemangioblast Development.

Date: March 11, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, A Resource for Biomedical Mass Spectrometry.

Date: March 11–13, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Chase Park Plaza Hotel, 212 N. Kingshighway Blvd., St. Louis, MO 63108.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: March 11, 2004.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Aging and Lifestyle Interventions.

Date: March 12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics and Genomics.

Date: March 12, 2004.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Renal Hypertension.

Date: March 12, 2004.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Immunobiology of Graft versus Host Reactions.

Date: March 12, 2004.

Time: 11 a.m. to 12 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7804, Bethesda, MD 20892, (301) 496–8551, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Chemosensory.

Date: March 12, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Red Cell Adhesion Proteins—Member Conflict.

Date: March 12, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BDCN–F(11) Medical Devices SBIR.

Date: March 12, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507.

Name of Committee: AIDS and Related Research Integrated Review Group Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: March 15–16, 2004.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Conflicts in Biophysics and Chemistry.

Date: March 15, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

Name of Committee: Center for Scientific Review Special Emphasis Panel Brain Disorders and Clinical Neuroscience ZRG1 BDCN–E (11) SBIR.

Date: March 15–16, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, National Institute of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246. *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Immunology: Small Business and Technology Applications.

Date: March 15–16, 2004.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel NMB Member Conflicts.

Date: March 15, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Ion Channels in Heart—Member Conflict.

Date: March 15, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel SRIR/STTR—Neurosciences.

Date: March 15, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict for NSAA.

Date: March 15, 2004.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017. *helmersk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3502 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel

qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 26, 2004.

Open: 7:45 a.m. to 8 a.m.

Agenda: Reports from Institute Staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Closed: 8 a.m. to 2:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, (301) 402–2829.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3522 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM): Notice of Availability

Summary

Notice is hereby given of the availability of the report entitled, "Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)." In accordance with requirements of the ICCVAM Authorization Act of 2000 (Pub. L. 106–545), this report provides a description of the activities that have been carried out during the past two years by ICCVAM and the NTP Interagency Center on the Evaluation of Alternative Toxicological Methods (NICEATM).

Availability of the Report

To receive a copy of the report, please contact NICEATM at P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709 (mail), 919–541–2384 (phone), 919–541–0947 (fax), or *niceatm@niehs.nih.gov* (e-mail). The report is also available on the ICCVAM/NICEATM Web site at: *http://iccvam.niehs.nih.gov.*

Background

The ICCVAM was formally authorized and designated as a permanent committee by the ICCVAM Authorization Act of 2000, which was signed into law by the President on December 19, 2000. ICCVAM's duties include the technical evaluation of new and alternative testing methods, development of test recommendations based on those technical evaluations, and forwarding recommendations to Federal agencies for their consideration. The ICCVAM also coordinates interagency issues on toxicological test method development, validation, regulatory acceptance, and national and international harmonization. The ICCVAM Authorization Act of 2000 directs ICCVAM to prepare biennial reports on its progress and to make these available to the public. Information about ICCVAM can be found on the Internet at: *http://iccvam.niehs.nih.gov/.*

Dated: February 16, 2004.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–3528 Filed 2–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Teleconference Meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council to be held in March 2004.

The Teleconference Meeting will be open and include discussion of the Center's policy issues and current administrative and program developments.

A summary of this meeting, a roster of committee members and substantive program information may be obtained from Carol Watkins, Executive Secretary, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–9542. Public comments are welcome. Please communicate with the individual listed below as contact for guidance.

If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

Committee Name: SAMHSA Center for Substance Abuse Prevention National Advisory Council.

Meeting Date and Time: OPEN—Tuesday, March 2, 2004, 2 p.m.–4 p.m.

Place: Conference Room I, 5515 Security Lane, Rockwall II, Rockville, Maryland, 20852, Telephone (301) 443–0365.

Contact: Carol D. Watkins, Executive Secretary, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857, Telephone: (301) 443–9542.

Dated: February 11, 2004.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration (SAMHSA).

[FR Doc. 04–3489 Filed 2–18–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17110]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet in Galveston, TX to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: The NAVSAC will meet on Monday and Tuesday, March 8 and 9, 2004, from 8:30 a.m. to 5 p.m. and on Wednesday, March 10, 2004, from 8:30 a.m. to noon. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 3, 2004. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before February 27, 2004.

ADDRESSES: NAVSAC will meet at The Tremont House, 2300 Ships Mechanic Row, Galveston, TX 77550. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast

Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Navigation and Safety Issues Associated with Containers Overboard.

(2) Obstructions in Anchorages and Fairways.

(3) Update on Ballast Water Issues.

(4) Marine Mammal Interface with Commercial Shipping.

(5) Inland Navigation Rules 18(f) and 34(h), and Annex 3—are changes needed in light of International Rules Amendments and the Automatic Identification System (AIS)?

(6) Visibility from the Wheelhouse of Towing Vessels.

(7) General Services Administration (GSA) Stakeholder Engagement Survey Report and NAVSAC's Business Plan.

(8) Update on Vessel Traffic Management and AIS.

(9) Update on the Marine Transportation System (MTS).

(10) Transportation Research Board of the National Academies' Special Report on "The Marine Transportation System and the Federal Role".

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 3, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than March 3, 2004. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to Margie Hegy at the address in the **ADDRESSES** section no later than February 27, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: February 13, 2004.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–3618 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17090]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Wednesday, March 17, 2004, from 8 a.m. to 2 p.m. The working groups will meet on the previous day, Tuesday, March 16, 2004, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before March 8, 2004. Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard on or before March 3, 2004.

ADDRESSES: TSAC will meet in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The working groups will first meet in the same room and then, if necessary, move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, G–MSO–1, Room 1210, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2004–17090.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Committee Meeting

The agenda tentatively includes the following items:

(1) Status Report of the Crew Alertness Working Group.

(2) Status Report of the Towing Vessel Regulatory Review Working Group.

(3) Status Report of the Maritime Security Working Group.

(4) Status Report of the Commercial/Recreational Boating Interface Working Group.

(5) Status Report of the Ammonium Nitrate Working Group.

(6) Status Report of the Mariner Deaths during Nighttime Barge Fleeting Operations Working Group.

(7) Status Report of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) Implementation Working Group.

(8) Presentation on International Ship and Port Facility Security (ISPS) Code Compliance and Change 3 to Navigation and Vessel Inspection Circular (NVIC) 11–93.

(9) Presentation on Electronic Notice of Arrival.

(10) Presentation on Oversize and Overloaded Tows.

(11) Presentation on Record Keeping for Designated Examiners.

(12) Presentation on National Maritime Center (NMC) and Regional Exam Center (REC) Reorganization.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than March 8, 2004. Written material for distribution at a meeting should reach the Coast Guard no later than March 8, 2004. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit 20 copies to the Assistant Executive Director no later than March 3, 2004. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than March 8, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: February 11, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–3597 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–27]

Announcement of Funding Awards for Fiscal Year 2003 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Fiscal Year 2003 awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2003 to housing agencies (HAs) under the section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to housing agencies for non-competitive funding awards such as, housing conversion actions, special housing conversion fees, public housing relocations and replacements, section 8 counseling, and FY 2003 administrative fees for housing conversion actions.

FOR FURTHER INFORMATION CONTACT: Deborah Hernandez, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–2934. Hearing- or speech-impaired individuals may call HUD's TTY number at 1(800) 927–7589. (Only the "800" telephone number is toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the housing choice voucher program are published at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

The purpose of this rental assistance program is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 2003 awardees announced in this notice were provided section 8 funds on an as-needed, non-competitive basis, *i.e.*, not consistent with the provisions of a Notice of Funding Availability (NOFAs). Announcements of awards provided consistent with NOFAs for family unification, mainstream housing, designated housing programs, and family self-sufficiency coordinators will be published in a separate **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of assistance; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to provide special housing fees to compensate housing agencies for any extraordinary section 8 administrative costs associated with the previous three categories; (5) to provide relocation and replacement housing in connection with the demolition of public housing; (6) to assist families affected by the prepayment of a rent supplement contract; (7) to provide counseling and assistance to families so that they may move to areas that have low racial and ethnic concentrations; and (8) for FY 2003 PHA administrative fees for the administration of housing choice vouchers awarded under this notice.

A total of $183,855,849 in budget authority for rental vouchers (26,787 units) was awarded to recipients under all of the above-mentioned categories.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in appendix A.

Dated: February 6, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003

Housing agency	Address	Units	Award
PROPERTY DISPOSITION FEES			
MOBILE HSG BOARD	P.O. BOX 1345, MOBILE, AL 36633	0	$14,750
SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA 50801	0	4,000
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	0	16,000
INDIANAPOLIS HA	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202	0	97,500
WICHITA HA	332 N. RIVERVIEW, WICHITA, KS 67203	0	7,000
DODGE CITY HA	407 EAST BEND, DODGE CITY, KS 67801	0	9,750
PITTSBURG HA	P.O. BOX 688, PITTSBURG, KS 66762	0	7,750
FORD COUNTY HA	P.O. BOX 1636, DODGE CITY, KS 67801	0	21,750
OWENSBORO HA	2161 EAST 19TH ST, OWENSBORO, KY 42303	0	9,500
ST MARTIN PARISH GOVT HSG DEPT	1555 GARY DR, BREAUX BRIDGE, LA 70517	0	10,500
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	9,000
H.A.K.C.	301 EASTARMOUR BLVD, KANSAS CITY, MO 64111	0	6,750
ST LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST LOUIS, MO 63121	0	15,750
HA MISSISSIPPI REG NO 7	P.O. BOX 886, MC COMB, MS 39648	0	9,750
ALLIANCE HA	300 SOUTH POTASH #27, ALLIANCE, NE 69301	0	7,250
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	0	65,250
CRAWFORD MHA	P.O. BOX 1029, MANSFIELD, OH 44901	0	7,000
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	22,750
HA CITY OF PITTSBURG	200 ROSS ST, PITTSBURGH, PA 15219	0	28,500
HARRISBURG HA	351 CHESTNUT ST, HARRISBURG, PA 17105	0	37,250
ABERDEEN	2324 3RD AVE SE, ABERDEEN, SD 57401	0	3,000
TENNESSEE HSG DEV AGENCY	404 J ROBERTSON PKWY, STE 1114, NASHVILLE-DAVIDSON, TN 37243.	0	5,750

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
Total for Property Disposition Fees	.....	0	$416,500
	PRESERVATION/PREPAYMENT FEES		
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	0	23,250
MOBILE HSG BOARD	P.O. BOX 1345, MOBILE, AL 36633	0	29,750
HA PHENIX CITY	P.O. BOX 338, PHENIX CITY, AL 36867	0	18,500
H/A CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	0	37,750
HA DECATUR	P.O. BOX 878, DECATUR, AL 35602	0	3,250
FLORENCE H/A	303 NORTH PINE ST, FLORENCE, AL 35630	0	22,250
CITY OF PHOENIX	251 W. WASHINGTON ST, PHOENIX, AZ 85003	0	2,500
MESA HA	415 N. PASADENA ST, MESA, AZ 85201	0	1,000
PINAL COUNTY HA	970 N 11 MILE CORNER RD, CASA GRANDE, AZ 85222	0	250
TEMPE HA	132 E. 6TH ST, STE 201, TEMPE, AZ 85280	0	3,500
SCOTTSDALE HOUSING AGENCY	7522 E FIRST ST, SCOTTSDALE, AZ 85251	0	8,500
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY, CA 91755	0	20,000
SACRAMENTO HSG & REDEV AUTH	P.O. BOX 1834, SACRAMENTO, CA 95812	0	28,500
COUNTY OF SAN JOAQUIN HSG	448 SOUTH CENTER ST, STOCKTON, CA 95203	0	3,250
RIVERSIDE COUNTY HA	5555 ARLINGTON AVE, RIVERSIDE, CA 92504	0	7,000
COUNTY OF SUTTER HA	448 GARDEN HIGHWAY, YUBA CITY, CA 95992	0	16,000
COUNTY OF SANTA CLARA HSG	505 WEST JULIAN ST, SAN JOSE, CA 95110	0	14,000
SAN DIEGO HSG COMM	1625 NEWTON AVE, SAN DIEGO, CA 92113	0	23,750
SANTA CRUZ COUNTY HA	2160–41ST AVE, CAPITOLA, CA 95010	0	17,500
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	0	22,500
HA OF JACKSONVILLE	1300 BRD ST, JACKSONVILLE, FL 32202	0	9,000
GAINESVILLE HA	P.O. BOX 1468, GAINESVILLE, FL 32602	0	7,750
CITY OF FORT MYERS	1700 MEDICAL LANE, FORT MYERS, FL 33907	0	6,500
COLLIER COUNTY HA	1800 FARM WORKER WAY, IMMOKALEE, FL 34142	0	500
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE NE, ATLANTA, GA 30303	0	22,750
CITY OF CEDAR RAPIDS	1211 SIXTH ST SW, CEDAR RAPIDS, IA 52401	0	6,750
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	0	37,000
DODGE CITY HA	407 EAST BEND, DODGE CITY, KS 67801	0	9,750
BOONE COUNTY HA	2950 WASHINGTON ST, RM 209, BURLINGTON, KY 41005	0	34,750
RAPIDES PARISH HA	119 BOYCE GARDENS, BOYCE, LA 71409	0	38,500
LOWELL HA	350 MOODY ST, LOWELL, MA 01853	0	7,500
BOSTON HA	52 CHAUNCY ST, BOSTON, MA 02111	0	15,500
SALEM HA	27 CHARTER ST, SALEM, MA 01970	0	56,000
COMM DEV PROG COMM OF MA	ONE CONGRESS ST, 10TH FL, BOSTON, MA 02114	0	6,000
HA OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201	0	1,250
CO COMMISSIONERS CHARLES CO	8190 PORT TOBACCO RD, PORT TOBACCO, MD 20677	0	41,000
BALTIMORE CO. HSG OFFICE	6401 YORK RD, 1ST FL, BALTIMORE, MD 21212	0	49,750
LEWISTON HA	1 COLLEGE ST, LEWISTON, ME 04240	0	54,000
ANN ARBOR HSG COMM	727 MILLER AVE, ANN ARBOR, MI 48103	0	46,000
WESTLAND HSG COMM	32715 DORSEY RD, WESTLAND, MI 48186	0	49,000
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	256,000
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	30,000
RICE COUNTY HRA	208 FIRST AVE NW, FARIBAULT, MN 55021	0	14,750
SOUTH CENTRAL MULTI COUNTY HRA	410 JACKSON ST, STE 100, MANKATO, MN 56002	0	5,250
LACONIA HSG & REDEV	25 UNION AVE, LACONIA, NH 03246	0	11,250
NEW BRUNSWICK HA	65 MORRIS ST, NEW BRUNSWICK, NJ 08901	0	28,250
EDGEWATER HA	300 UNDERCLIFF AVE, EDGEWATER, NJ 07002	0	500
THE MUNIC HA CITY OF YONKERS	1511 CENTRAL PARK AVE, YONKERS, NY 10710	0	109,750
ALBANY HA	4 LINCOLN SQUARE, ALBANY, NY 12202	0	16,750
TOWN OF AMHERST	1195 MAIN ST, BUFFALO, NY 14209	0	26,750
THE CITY OF NEW YORK, DHPD	100 GOLD ST, RM 5N, NEW YORK, NY 10038	0	359,250
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	0	5,250
TRUMBULL MHA	4076 YOUNGSTOWN RD SE, WARREN, OH 44484	0	3,250
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052	0	4,750
ASHTABULA MHA	3600 LAKE AVENUE, ASHTABULA, OH 44005	0	1,000
PORTAGE MHA	2832 STATE ROUTE 59, RAVENNA, OH 44266	0	41,500
CLERMONT MET.HA.	65 SOUTH MARKET ST, BATAVIA, OH 45103	0	1,000
PARMA PHA	6901 WEST RIDGEWOOD DR, PARMA, OH 44129	0	50,250
SENECA MHA	150 PARK AVENUE WEST, MANSFIELD, OH 44901	0	1,500
HANCOCK MHA	604 LIMA AVE, FINDLAY, OH 45840	0	8,000
HA OF WASHINGTON COUNTY	111 NE LINCOLN ST, STE 200–L, MS63, HILLSBORO, OR 97124	0	6,750
HA OF CITY OF PITTSBURG	200 ROSS ST, PITTSBURGH, PA 15219	0	12,750
ERIE CITY HA	606 HOLLAND ST, ERIE, PA 16501	0	1,750
WILKES BARRE HA	50 LINCOLN PLAZA, WILKES BARRE, PA 18702	0	41,250
WILLIAMSPORT HA	605 WEST 4TH ST, WILLIAMSPORT, PA 17701	0	11,000
WOONSOCKET HA	679 SOCIAL ST, WOONSOCKET, RI 02895	0	2,250
NORTH PROVIDENCE HA	945 CHARLES ST, NORTH PROVIDENCE, RI 02904	0	1,000

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
HA OF COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	0	5,000
HA OF SUMTER	P. O. BOX 1030, SUMTER, SC 29151	0	10,750
PENNINGTON COUNTY HA	1805 WEST FULTON ST, RAPID CITY, SD 57702	0	3,250
AUSTIN HA	P.O. BOX 6159, AUSTIN, TX 78762	0	8,250
EL PASO HA	5300 E PAISONA, EL PASO, TX 79905	0	37,000
SAN ANTONIO HA	818 S. FLORES ST, SAN ANTONIO, TX 78295	0	13,500
TEXARKANA	1611 N. ROBISON RD, TEXARKANA, TX 75501	0	1,750
DEL RIO HA	P.O. DRAWER 4080, DEL RIO, TX 78841	0	14,000
BEEVILLE HA	P.O. BOX 427, BEEVILLE, TX 78104	0	15,750
TARRANT COUNTY	1200 CIRCLE DR, STE 200, FORT WORTH, TX 76119	0	14,500
HARRIS COUNTY HA	8410 LANTERN POINT, HOUSTON, TX 77054	0	19,750
ALEXANDRIA REDEV & HA	600 N FAIRFAX ST, ALEXANDRIA, VA 22314	0	25,500
CITY OF VIRGINIA BEACH	2424 COURTHOUSE DR, VIRGINIA BEACH, VA 23456	0	37,500
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220	0	20,250
HA OF CITY OF VANCOUVER	2500 MAIN ST, #200, VANCOUVER, WA 98660	0	6,250
MASON COUNTY HA	P.O. BOX 4460, BREMERTON, WA 98312	0	1,250
Total for Preservation/Prepayment Fees.		0	$2,088,250
	PRESERVATION/PREPAYMENT		
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	99	540,540
MOBILE HSG BOARD	P.O. BOX 1345, MOBILE, AL 36633	150	617,076
H/A CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	176	811,008
HA DECATUR	P.O. BOX 878, DECATUR, AL 35602	14	54,600
FLORENCE HA	303 NORTH PINE ST, FLORENCE, AL 35630	96	34,464
FAYETTEVILLE HA	# 1 NORTH SCHOOL AVE, FAYETTEVILLE, AR 72701	35	123,480
CITY OF PHOENIX	251 W. WASHINGTON ST, PHOENIX, AZ 85003	2	38,080
MESA HA	415 N. PASADENA ST, MESA, AZ 85201	1	12,796
PINAL COUNTY HA	970 N 11 MILE CORNER RD, CASA GRANDE, AZ 85222	1	5,712
TEMPE HA	132 E. 6TH ST, STE 201, TEMPE, AZ 85280	14	97,512
SCOTTSDALE HOUSING AGENCY	7522 E FIRST ST, SCOTTSDALE, AZ 85251	40	274,560
SAN FRANCISCO HA	440 TURK ST, SAN FRANCISCO, CA 94102	150	2,503,800
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY, CA 91755	80	535,680
SACRAMENTO HSG & REDEV AUTH	P.O. BOX 1834, SACRAMENTO, CA 95812	89	511,260
RIVERSIDE COUNTY HSNG AUTH	5555 ARLINGTON AVE, RIVERSIDE, CA 92504	28	187,488
COUNTY OF SUTTER HA	448 GARDEN HIGHWAY, YUBA CITY, CA 95992	64	238,848
COUNTY OF SANTA CLARA HSG	505 WEST JULIAN ST, SAN JOSE, CA 95110	56	798,336
SAN DIEGO HSG COMM	1625 NEWTON AVE, SAN DIEGO, CA 92113	144	926,208
SANTA CRUZ COUNTY HA	2160—41ST AVE, CAPITOLA, CA 95010	0	164,850
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	159	1,376,412
HA OF JACKSONVILLE	1300 BRD ST, JACKSONVILLE, FL 32202	43	227,556
GAINESVILLE HA	P.O. BOX 1468, GAINESVILLE, FL 32602	39	189,540
CITY OF FORT MYERS	1700 MEDICAL LANE, FORT MYERS, FL 33907	30	156,960
COLLIER COUNTY HA	1800 FARM WORKER WAY, IMMOKALEE, FL 34142	7	49,896
HA ATLANTA GA	230 J WESLEY DOBBS AVE NE, ATLANTA, GA 30303	101	738,108
CITY OF CEDAR RAPIDS	1211 SIXTH ST SW, CEDAR RAPIDS, IA 52401	30	135,720
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	265	2,156,404
DODGE CITY HA	407 EAST BEND, DODGE CITY, KS 67801	40	177,120
BOONE COUNTY HA	2950 WASHINGTON ST, RM 209, BURLINGTON, KY 41005	146	702,552
RAPIDES PARISH HA	119 BOYCE GARDENS, BOYCE, LA 71409	160	629,760
LOWELL HA	350 MOODY ST, LOWELL, MA 01853	31	263,748
CHELSEA HA	54 LOCKE ST, CHELSEA, MA 02150	108	1,319,328
SALEM HA	27 CHARTER ST, SALEM, MA 01970	224	3,790,080
COMM DEV PROG COMM OF MA	ONE CONGRESS ST, 10TH FL, BOSTON, MA 02114	24	213,120
HA OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201	151	1,232,868
CO COMMISSIONERS CHARLES CO	8190 PORT TOBACCO RD, PORT TOBACCO, MD 20677	101	848,400
LEWISTON HA	1 COLLEGE ST, LEWISTON, ME 04240	251	954,804
ANN ARBOR HSG COMM	727 MILLER AVE, ANN ARBOR, MI 48103	191	1,320,864
WESTLAND HSG COMM	32715 DORSEY RD, WESTLAND, MI 48186	200	1,125,600
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	1,096	5,829,720
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	120	525,600
RICE COUNTY HRA	208 FIRST AVE NW, FARIBAULT, MN 55021	59	237,888
SOUTH CENTRAL MULTI CO HRA	410 JACKSON ST, STE 100, MANKATO, MN 56002	95	117,734
ISOTHERMAL PLAN & DEV COMM	111 W COURT ST, RUTHERFORDTON, NC 28139	6	21,528
LACONIA HSG & REDEV	25 UNION AVE, LACONIA, NH 03246	46	228,528
NEW BRUNSWICK HA	65 MORRIS ST, NEW BRUNSWICK, NJ 08901	115	1,041,900
VINELAND HA	191 CHESTNUT AVE, VINELAND, NJ 08360	26	150,384
THE MUNIC HA CITY OF YONKERS	1511 CENTRAL PARK AVE, YONKERS, NY 10710	439	4,185,936
ALBANY HA	4 LINCOLN SQUARE, ALBANY, NY 12202	205	1,013,520

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
TOWN OF AMHERST	1195 MAIN ST, BUFFALO, NY 14209	109	455,184
THE CITY OF NEW YORK, DHPD	100 GOLD ST, RM 5N, NEW YORK, NY 10038	1,225	8,335,524
NEW YORK STATE HSG FIN AGENCY	25 BEAVER ST, RM 674, NEW YORK, NY 10007	543	4,763,196
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	490	3,132,852
AKRON MHA	100 W. CEDAR ST, AKRON, OH 44307	105	606,060
TRUMBULL MHA	4076 YOUNGSTOWN RD SE, WARREN, OH 44484	18	79,920
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052	20	110,280
MANSFIELD MHA	P.O. BOX 1029, MANSFIELD, OH 44901	128	510,672
ASHTABULA MHA	P.O. BOX 2350, ASHTABULA, OH 44005	13	67,080
P. O.RTAGE MHA	2832 STATE ROUTE 59, RAVENNA, OH 44266	173	857,388
CLERMONT MET.HA.	65 SOUTH MARKET ST, BATAVIA, OH 45103	4	17,568
PARMA PHA	6901 WEST RIDGEWOOD DR, PARMA, OH 44129	201	882,792
SENECA MHA	P.O. BOX 1029, MANSFIELD, OH 44901	6	19,152
HANCOCK MHA	604 LIMA AVE, FINDLAY, OH 45840	32	116,736
HA OF WASHINGTON COUNTY	111 NE LINCOLN ST STE 200–L, MS63, HILLSBORO, OR 97124	29	161,820
HA OF CITY OF PITTSBURG	200 ROSS ST, PITTSBURGH, PA 15219	83	420,312
ERIE CITY HA	606 HOLLAND ST, ERIE, PA 16501	7	26,040
WILKES BARRE HA	50 LINCOLN PLAZA, WILKES BARRE, PA 18702	200	777,600
WILLIAMSPORT HA	605 WEST 4TH ST, WILLIAMSPORT, PA 17701	45	182,520
NORTH PROVIDENCE HA	945 CHARLES ST, NORTH PROVIDENCE, RI 02904	3	17,676
HA COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	20	107,280
HA SUMTER	P.O. BOX 1030, SUMTER, SC 29151	50	184,200
PENNINGTON COUNTY	1805 WEST FULTON ST, RAPID CITY, SD 57702	14	61,488
AUSTIN HA	P.O. BOX 6159, AUSTIN, TX 78762	33	242,748
EL PASO	5300 E PAISONA, EL PASO, TX 79905	179	936,444
SAN ANTONIO HA	818 S. FLORES ST, SAN ANTONIO, TX 78295	16	91,776
TEXARKANA	1611 N. ROBISON RD, TEXARKANA, TX 75501	7	35,280
DEL RIO HA	P.O. DRAWER 4080, DEL RIO, TX 78841	56	206,976
BEEVILLE HA	P.O. BOX 427, BEEVILLE, TX 78104	64	212,736
TARRANT COUNTY HA	1200 CIRCLE DR, STE 200, FORT WORTH, TX 76119	62	330,336
HARRIS COUNTY HA	8410 LANTERN POINT, HOUSTON, TX 77054	79	519,504
ALEXANDRIA REDEV & HA	600 N FAIRFAX ST, ALEXANDRIA, VA 22314	104	802,464
CITY OF VIRGINIA BEACH	2424 COURTHOUSE DR, VIRGINIA BEACH, VA 23456	150	711,000
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220	12	56,160
HA CITY OF VANCOUVER	2500 MAIN ST, #200, VANCOUVER, WA 98660	26	150,384
Total for Preservation/Prepayment		10,053	$65,627,024
PROPERTY DISPOSITION RELOCATIONS			
MOBILE HSG BOARD	P.O. BOX 1345, MOBILE, AL 36633	72	338,688
CO DIV OF HSG	1313 SHERMAN ST, ROOM 518, DENVER HA, CO 80203	48	341,568
SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA 50801	20	68,400
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	69	485,208
INDIANAPOLIS HA	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202	416	2,046,528
KANSAS CITY HA	1124 NORTH NINTH ST, KANSAS CITY, KS 66101	100	536,400
WICHITA HA	332 N. RIVERVIEW, WICHITA, KS 67203	60	307,440
PITTSBURG HA	P.O. BOX 688, PITTSBURG, KS 66762	70	222,240
ST MARTIN PARISH GOVT HSG DEPT	1555 GARY DR, BREAUX BRIDGE, LA 70517	100	322,800
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	71	370,620
H.A.K.C.	301 EASTARMOUR BLVD, KANSAS CITY, MO 64111	78	395,928
ST LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST LOUIS, MO 63121	97	465,600
HA MISSISSIPPI REG NO 7	P.O. BOX 886, MC COMB, MS 39648	60	208,080
ALLIANCE HA	300 SOUTH POTASH #27, ALLIANCE, NE 69301	50	147,000
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY 10007	136	1,013,016
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	351	1,952,064
CRAWFORD MHA	P.O. BOX 1029, MANSFIELD, OH 44901	50	193,200
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	110	495,000
HA OF CITY OF PITTSBURG	200 ROSS ST, PITTSBURGH, PA 15219	312	1,579,968
PHILADELPHIA HA	12 SOUTH 23RD ST, PHILADELPHIA, PA 19103	50	396,600
HARRISBURG HA	351 CHESTNUT ST, HARRISBURG, PA 17105	301	1,531,488
ABERDEEN HA	2324 3RD AVE SE, ABERDEEN, SD 57401	24	69,984
KNOXVILLE COMM DEVEL CORP	P.O. BOX 3550, KNOXVILLE, TN 37927	264	1,181,664
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY, STE 1114, NASHVILLE-DAVIDSON, TN 37243.	47	217,140
Total for Property Disposition Relocations.		2,956	$14,886,624
PUBLIC HOUSING RELOCATIONS AND REPLACEMENTS			
HA OF NORTHPORT	P.O. DRAWER 349, NORTHPORT, AL 35476	70	321,720

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
CITY OF PHOENIX	251 W. WASHINGTON ST, PHOENIX, AZ 85003	0	90,167
LAKEWOOD LA	445 S. ALLISON PKWY, LAKEWOOD, CO 80226	50	424,800
HA OF CITY OF NEW HAVEN	360 ORANGE ST, NEW HAVEN, CT 06511	491	3,975,568
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	1,194	10,215,864
HA OF MARIETTA	P. O. DRAWER K, MARIETTA, GA 30061	100	744,000
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	2,857	23,244,552
HA OF CITY OF E. SAINT LOUIS	700 NORTH 20TH ST, EAST ST LOUIS, IL 62205	66	354,024
CHAMPAIGN COUNTY HA	205 WEST PARK AVE, CHAMPAIGN, IL 61820	49	286,356
CHRISTIAN COUNTY HA	P. O. BOX 86, PANA, IL 62557	30	105,840
PADUCAH HA	300 SOUTH FIFTH ST, PADUCAH, KY 42002	40	151,680
NEW ORLEANS HA	4100 TOURO ST, NEW ORLEANS, LA 70122	542	3,356,064
ROCKVILLE HA	14 MOORE DR, ROCKVILLE, MD 20850	65	750,360
HA OF BILOXI	P. O. BOX 447, BILOXI, MS 39533	111	636,696
MISS REG H/A VIII	P. O. BOX 2347, GULFPORT, MS 39505	150	738,000
HA OF SOUTH DELTA	P. O. BOX 4769, GREENVILLE, MS 38704	200	926,400
JACKSON HA	2747 LIVINGSTON RD, JACKSON, MS 39283	184	949,440
HA OF DURHAM	330 E MAIN ST, DURHAM, NC 27702	158	987,816
ALBANY HA	4 LINCOLN SQUARE, ALBANY, NY 12202	44	189,552
COLUMBUS MET HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	194	1,101,144
CLERMONT MET HA	65 SOUTH MARKET ST, BATAVIA, OH 45103	27	127,656
HA OF AIKEN	P. O. BOX 889, AIKEN, SC 29802	80	450,240
HA OF NORTH CHARLESTON	P. O. BOX 70987, NORTH CHARLESTON, SC 29415	405	2,046,060
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY STE 1114, NASHVILLE-DAVIDSON, TN 37243.	62	286,440
Total for Public Housing Relocations and Replacements.		7,169	52,350,439
SECTION 10(c) CONVERSIONS			
CAMBRIDGE HA	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139	94	1,152,816
Total for Section 10(c) Conversions		94	1,152,816
TERMINATIONS, OPT-OUTS, AND PD FEES			
MOBILE HSG BOARD	P. O. BOX 1345, MOBILE, AL 36633	0	19,000
DOTHAN HA	P. O. BOX 1727, DOTHAN, AL 36302	0	5,250
HA OF HUNTSVILLE	P. O. BOX 486, HUNTSVILLE, AL 35804	0	2,500
HA SCOTTSBORO	102 WORTHINGTON ST, SCOTTSBORO, AL 35768	0	25,000
PRATTVILLE HA	318 WATER ST, PRATTVILLE, AL 36067	0	9,750
HA OF THE CITY OF HOT SPRINGS	110 HIGHRISE CIRCLE, HOT SPRINGS, AR 71901	0	5,750
SACRAMENTO HSG & DEV	P.O. BOX 1834, SACRAMENTO, CA 95812	0	4,250
CITY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	0	28,250
SAN BERNARDINO CO HA	715 E. BRIER DR, SAN BERNARDINO, CA 92408	0	15,000
COUNTY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	0	9,000
CITY OF ALAMEDA HAR	701 ATLANTIC AVE, ALAMEDA, CA 94501	0	10,500
SAN LUIS OBISPO HA	P.O. BOX 1289, SAN LUIS OBISPO, CA 93406	0	5,500
ALAMEDA COUNTY HA	22941 ATHERTON ST, HAYWARD, CA 94541	0	6,000
HA CITY OF NAPA	1115 SEMINARY ST, NAPA, CA 94559	0	3,500
ORANGE COUNTY HA	1770 NORTH BROADWAY, SANTA ANA, CA 92706	0	16,000
ANAHEIM HA	201 S. ANAHEIM BLVD, STE 203, ANAHEIM, CA 92805	0	15,000
DENVER HA	777 GRANT ST, DENVER HA, CO 80203	0	41,750
CO DIV OF HSG	1313 SHERMAN ST, R00M 518, DENVER HA, CO 80203	0	12,500
WATERBURY HA	2 LAKEWOOD RD, WATERBURY, CT 06704	0	10,250
BRISTOL HA	31 QUAKER LANE, BRISTOL, CT 06010	0	15,000
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	0	250
SARASOTA BOCC	P. O. BOX 1058, SARASOTA, FL 34236	0	9,000
COUNTY OF HAWAII	50 WAILUKU DR, HILO, HI 96720	0	20,000
GRINNELL LOW RENT HA	927 4TH AVE, GRINNELL, IA 50112	0	7,000
REG HA—VOUCHER XI	108 WEST 6TH ST, CARROLL, IA 51401	0	5,250
HA CITY OF POCATELLO	P. O. BOX 4161, POCATELLO, ID 83205	0	4,500
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	0	3,000
HA OF COOK COUNTY	310 SO MICHIGAN AVE, 15TH FL, CHICAGO, IL 60661	0	20,000
HA OF THE COUNTY OF LAKE	33928 N ROUTE 45, GRAYSLAKE, IL 60030	0	1,750
LOUISVILLE HA	420 SOUTH EIGHTH ST, LOUISVILLE, KY 40203	0	18,500
PITTSFIELD HA	65 COLUMBUS AVE, PITTSFIELD, MA 01201	0	1,500
HA OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201	0	19,000
MONTGOMERY CO HA	10400 DETRICK AVE, KENSINGTON, MD 20895	0	6,000
BANGOR HA	161 DAVIS RD, BANGOR, ME 04401	0	1,750
JACKSON HSG COMM	301 STEWARD AVE, JACKSON, MI 49201	0	4,500
LIVONIA HSG COMM	19300 PURLINGBROOK RD, LIVONIA, MI 48152	0	6,500

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
FERNDALE HSG COMM	415 WITHINGTON, FERNDALE, MI 48220	0	14,000
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	45,750
ST PAUL PHA	480 CEDAR ST, ST PAUL, MN 55101	0	3,750
MOORHEAD PHA	800 SECOND AVE NORTH, MOORHEAD, MN 56560	0	5,750
METROPOLITAN COUNCIL HRA	230 EAST FIFTH ST, ST PAUL, MN 55101	0	12,000
OWATONNA HRA	540 WEST HILLS CIRCLE, OWATONNA, MN 55060	0	1,750
HA OF DURHAM	330 E MAIN ST, DURHAM, NC 27702	0	3,000
FOSTER COUNTY HA	55 16TH AVE SOUTH, CARRINGTON, ND 58421	0	1,500
ENGLEWOOD HA	111 WEST ST, ENGLEWOOD, NJ 07631	0	8,500
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY 10007	0	71,750
COLUMBUS METRO HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	0	250
CINCINNATI METRO HA	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210	0	15,250
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052	0	5,250
MANSFIELD MHA	150 PARK AVE WEST, MANSFIELD, OH 44901	0	34,500
ALLEN MHA	600 SOUTH MAIN ST, LIMA, OH 45804	0	7,250
HAMILTON COUNTY PHA	138 EAST COURT ST, ROOM 507, CINCINNATI, OH 45202	0	14,500
HA OF WASHINGTON COUNTY	111 NE LINCOLN ST STE 200–L, MS63, HILLSBORO, OR 97124	0	12,000
JOSEPHINE HSG COMM DEV COUNCIL	P. O.B 1630, GRANTS PASS, OR 97528	0	2,000
MUNICIPALITY OF CAROLINA	P. O. BOX 8, CAROLINA, PR 00986	0	29,250
PUERTO RICO HSG FINANCE CO	CALL BOX 71361–GPO, SAN JUAN, PR 00936	0	112,250
HA OF COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	0	7,500
HA OF SUMTER	P. O. BOX 1030, SUMTER, SC 29151	0	28,000
SIOUX FALLS HA	630 SOUTH MINNESOTA, SIOUX FALLS, SD 57104	0	2,750
HA OF MEMPHIS	700 ADAMS AVE, MEMPHIS, TN 38103	0	26,250
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY, STE 1114, NASHVILLE-DAVIDSON, TN 37243.	0	12,750
FORT WORTH HA	P.O BOX 430, FORT WORTH, TX 76101	0	5,750
PORT ARTHUR	P.O BOX 2295, PORT ARTHUR, TX 77643	0	4,250
CITY OF PASADENA HA	P.O BOX 672, PASADENA, TX 77501	0	5,250
GREENVILLE HA	4417 O'NEAL, GREENVILLE, TX 75401	0	17,750
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, SEATTLE, WA 98188	0	11,000
HA CITY OF TACOMA	902 SOUTH "L" ST, STE 2C, TACOMA, WA 98405	0	10,000
MADISON CDA	P.O BOX 1785, MADISON, WI 53701	0	8,750
WAUKESHA HA	120 CORRINA BLVD, WAUKESHA, WI 53186	0	18,000
DANE COUNTY HA	2001 W BROADWAY, STE 1, MONONA, WI 53713	0	12,250
MORGANTOWN HA	103 12TH ST P. O. BOX 2738, FAIRMONT, WV 26555	0	2,000
Total for Terminations, Opt-outs, and PD Fees.		0	960,750
	TERMINATIONS AND OPT-OUTS		
MOBILE HSG BOARD	P. O. BOX 1345, MOBILE, AL 36633	83	402,384
DOTHAN HA	P. O. BOX 1727, DOTHAN, AL 36302	21	88,956
HA OF HUNTSVILLE	P. O. BOX 486, HUNTSVILLE, AL 35804	10	44,520
HA OF SCOTTSBORO	102 WORTHINGTON ST, SCOTTSBORO, AL 35768	100	339,600
PRATTVILLE HA	318 WATER ST, PRATTVILLE, AL 36067	40	184,320
HA OF CITY OF HOT SPRINGS	110 HIGHRISE CIRCLE, HOT SPRINGS, AR 71901	23	98,808
POINSETT COUNTY HA	P. O. BOX 433, TRUMANN, AR 72472	10	32,760
SACRAMENTO HSG & DEV	P.O BOX 1834, SACRAMENTO, CA 95812	18	87,264
CITY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	113	564,096
SAN BERNARDINO CO HA	715 E. BRIER DR, SAN BERNARDINO, CA 92408	60	374,400
COUNTY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	39	176,436
CITY OF ALAMEDA HA	701 ATLANTIC AVENUE, ALAMEDA, CA 94501	42	349,272
SAN LUIS OBISPO HA	P.O BOX 1289, SAN LUIS OBISPO, CA 93406	22	136,752
ALAMEDA COUNTY HA	22941 ATHERTON ST, HAYWARD, CA 94541	24	272,628
HA CITY OF NAPA	1115 SEMINARY ST, NAPA, CA 94559	14	106,668
ORANGE COUNTY HA	1770 NORTH BROADWAY, SANTA ANA, CA 92706	64	562,944
ANAHEIM HA	201 S. ANAHEIM BLVD, STE 203, ANAHEIM, CA 92805	64	549,888
IMPERIAL VALLEY HA	1401 D ST, BRAWLEY, CA 92227	15	58,320
DENVER HA	777 GRANT ST, DENVER, CO 80203	196	1,576,152
LAKEWOOD HA	445 S. ALLISON PKWY, LAKEWOOD, CO 80226	175	1,474,200
CO DIV OF HSG	1313 SHERMAN ST, R00M 518, DENVER, CO 80203	70	586,320
WATERBURY HA	2 LAKEWOOD RD, WATERBURY, CT 06704	41	228,780
BRISTOL HA	31 QUAKER LANE, BRISTOL, CT 06010	78	486,720
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	1	8,316
SARASOTA BOCC	P. O. BOX 1058, SARASOTA, FL 34236	36	238,464
HA OF SAVANNAH	P. O. BOX 1179, SAVANNAH, GA 31402	4	25,104
COUNTY OF HAWAII	50 WAILUKU DR, HILO, HI 96720	100	616,800
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST, STE 311, HONOLULU, HI 96813	10	68,640
DES MOINES MUNICIPAL HA	100 EAST EUCLID, STE 101, DES MOINES, IA 50313	48	227,520

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
CITY OF IOWA CITY	410 E. WASHINGTON ST, IOWA CITY, IA 52240	64	329,472
GRINNELL LOW RENT HA	927 4TH AVE, GRINNELL, IA 50112	32	105,600
CITY OF MASON CITY	10–IST ST NW, MASON CITY, IA 50401	48	156,672
REG HA—VOUCHER XI	108 WEST 6TH ST, CARROLL, IA 51401	24	73,152
SOUTHEAST IOWA REG HA	214 N. 4TH, BURLINGTON, IA 52601	24	69,408
HA CITY OF POCATELLO	P. O. BOX 4161, POCATELLO, ID 83205	19	79,488
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	263	1,953,096
HA OF COOK COUNTY	310 SO MICHIGAN AVE, 15TH FL, CHICAGO, IL 60604	80	616,320
HA OF THE COUNTY OF LAKE	33928 N ROUTE 45, GRAYSLAKE, IL 60030	47	393,108
ECKAN	P. O. BOX 100, OTTAWA, KS 66067	52	206,544
LOUISVILLE HA	420 SOUTH EIGHTH ST, LOUISVILLE, KY 40203	102	578,704
CITY OF LOUISVILLE HA	617 WEST JEFFERSON ST, LOUISVILLE, KY 40202	0	7,520
HA OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201	76	489,744
MONTGOMERY CO HA	10400 DETRICK AVE, KENSINGTON, MD 20895	24	235,872
HARFORD COUNTY HA	15 SOUTH MAIN ST, STE 106, BEL AIR, MD 21014	100	478,800
BANGOR HA	161 DAVIS RD, BANGOR, ME 04401	7	29,904
MAINE STATE HA	353 WATER ST, AUGUSTA, ME 04330	18	88,776
JACKSON HSG COMM	301 STEWARD AVE, JACKSON, MI 49201	19	88,008
LIVONIA HSG COMM	19300 PURLINGBROOK RD, LIVONIA, MI 48152	30	187,560
FERNDALE HSG COMM	415 WITHINGTON, FERNDALE, MI 48220	56	279,552
MICHIGAN STATE HSG DEV AUTH	P.O BOX 30044, LANSING, MI 48909	183	1,032,120
ST PAUL PHA	480 CEDAR ST, ST PAUL, MN 55101	17	106,896
MOORHEAD PHA	800 SECOND AVE NORTH, MOORHEAD, MN 56560	24	88,128
METROPOLITAN COUNCIL HRA	230 EAST FIFTH ST, ST PAUL, MN 55101	49	314,688
OWATONNA HRA	540 WEST HILLS CIRCLE, OWATONNA, MN 55060	8	37,920
ST LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST LOUIS, MO 63121	6	32,400
HA OF MISSISSIPPI REG NO 5	P. O. BOX 419, NEWTON, MS 39345	48	169,920
HA OF DURHAM	330 E MAIN ST, DURHAM, NC 27702	12	75,024
FOSTER COUNTY HA	55—16TH AVE SOUTH, CARRINGTON, ND 58421	12	24,768
ENGLEWOOD HA	111 WEST ST, ENGLEWOOD, NJ 07631	34	332,112
CITY OF LAS VEGAS HA	420 N. 10TH ST, LAS VEGAS, NV 89125	15	122,580
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY 10007	701	5,330,076
HA OF MECHANICVILLE	HARRIS AVE, MECHANICVILLE, NY 12118	26	98,280
NEW YORK STATE HSG FIN AGENCY	25 BEAVER ST, RM 674, NEW YORK, NY 10007	220	1,929,840
COLUMBUS METRO HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	15	91,524
CINCINNATI METRO HA	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210	79	385,236
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052	67	334,464
MANSFIELD MHA	P. O. BOX 1029, MANSFIELD, OH 44901	156	516,672
ALLEN MHA	600 SOUTH MAIN ST, LIMA, OH 45804	40	167,040
HAMILTON COUNTY PHA	138 EAST COURT ST, ROOM 507, CINCINNATI, OH 45202	61	358,680
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	13	62,868
HA WASHINGTON COUNTY	111 NE LINCOLN ST, STE 200–L, MS63, HILLSBORO, OR 97124	48	295,308
JOSEPHINE HSG COMM DEV COUNCIL	P.O. B 1630, GRANTS PASS, OR 97528	9	38,556
CHESTER HA	1010 MADISON ST, CHESTER, PA 19016	71	585,324
MUNICIPALITY OF CAROLINA	P.O. BOX 8, CAROLINA, PR 00986	119	598,332
PUERTO RICO HSG FINANCE CO	CALL BOX 71361–GPO, SAN JUAN, PR 00936	449	2,859,912
HA OF COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	30	163,800
CITY OF SPARTANBURG HA	P.O. BOX 2828, SPARTANBURG, SC 29304	30	151,200
HA OF GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	10	50,280
HA OF SOUTH CAROLINA REG NO 1	P.O. BOX 326 404 CHURCH ST, LAURENS, SC 29360	5	21,900
HA OF SUMTER	P.O. BOX 1030, SUMTER, SC 29151	112	411,264
SIOUX FALLS HA	630 SOUTH MINNESOTA, SIOUX FALLS, SD 57104	14	73,752
HA OF MEMPHIS	700 ADAMS AVE, MEMPHIS, TN 38103	114	607,392
TENNESSEE HSG DEV AGENCY	404 J ROBERTSON PKWY, STE 1114, NASHVILLE-DAVIDSON, TN 37243.	54	252,720
FORT WORTH HA	P.O. BOX 430, FORT WORTH, TX 76101	25	138,900
PORT ARTHUR HA	P.O. BOX 2295, PORT ARTHUR, TX 77643	17	68,952
CITY OF PASADENA HA	P.O. BOX 672, PASADENA, TX 77501	24	125,568
HARRIS COUNTY HA	8410 LANTERN POINT, HOUSTON, TX 77054	92	665,712
GREENVILLE HA	4417 O'NEAL, GREENVILLE, TX 75401	72	367,200
HA OF CITY OF SEATTLE	120 SIXTH AVENUE NORTH, SEATTLE, WA 98109	27	189,864
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, SEATTLE, WA 98188	46	341,688
MADISON CDA	P.O. BOX 1785, MADISON, WI 537015	42	216,216
DOOR COUNTY HA	57 N 12TH AVE, STURGEON BAY, WI 54235	16	46,272
EAU CLAIRE HA	203 S FARWELL ST, EAU CLAIRE, WI 54702	21	67,032
DANE COUNTY HA	2001 W BROADWAY, STE 1, MONONA, WI 53713	54	316,872
MORGANTOWN HA	103 12TH ST, FAIRMONT, WV 26555	8	34,848
Total for Terminations and Opt-outs		5,901	36,714,432

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2003—Continued

Housing agency	Address	Units	Award
TENANT PROTECTION ADMINISTRATIVE FEES (SY 2003)			
FAYETTEVILLE HA	#1 NORTH SCHOOL AVE, FAYETTEVILLE, AR 72701	0	25,706
POINSETT COUNTY HA	P.O. BOX 433, TRUMANN, AR 72472	0	7,300
SAN FRANCISCO HA	440 TURK ST, SAN FRANCISCO, CA 94102	0	173,518
IMPERIAL VALLEY HA	1401 D ST, BRAWLEY, CA 92227	0	13,614
DENVER HA	777 GRANT ST, DENVER HA, CO 80203	0	8,000
LAKEWOOD HA	445 S. ALLISON PKWY, LAKEWOOD, CO 802265	0	30,372
CO DIV OF HSG	1313 SHERMAN ST, R00M 518, DENVER, CO 80203	0	10,750
BRISTOL HA	31 QUAKER LANE, BRISTOL, CT 06010	0	54,846
DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	0	1,067,124
HA OF SAVANNAH	P.O. BOX 1179, SAVANNAH, GA 31402	0	750
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST, STE 311, HONOLULU, HI 96813	0	11,154
SOUTHEAST IOWA REG HA	214 N. 4TH, BURLINGTON, IA 52601	0	17,868
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	0	118,330
HA OF THE COUNTY OF LAKE	33928 N ROUTE 45, GRAYSLAKE, IL 60030	0	9,500
KANSAS CITY HA	1124 NORTH NINTH ST, KANSAS CITY, KS 66101	0	15,750
PITTSBURG HA	P.O. BOX 688, PITTSBURG, KS 66762	0	7,500
ECKAN	P.O. BOX 100, OTTAWA, KS 66067	0	13,000
LOUISVILLE HA	420 SOUTH EIGHTH ST, LOUISVILLE, KY 40203	0	7,000
NEW ORLEANS HA	4100 TOURO ST, NEW ORLEANS, LA 70122	0	542,000
CHELSEA HA	54 LOCKE ST, CHELSEA, MA 02150	0	124,180
HA OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201	0	130,040
ROCKVILLE HA	14 MOORE DR, ROCKVILLE, MD 20850	0	60,084
MAINE STATE HA	353 WATER ST, AUGUSTA, ME 04330	0	4,500
SOUTH CENTRAL MULTI COUNTY HRA	410 JACKSON ST, STE 100, MANKATO, MN 56002	0	13,500
ST LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST LOUIS, MO 63121	0	1,500
HA MISSISSIPPI REG NO 5	P.O. BOX 419, NEWTON, MS 39345	0	35,018
JACKSON HOUS AUTH	2747 LIVINGSTON RD, JACKSON, MS 39283	0	205,952
VINELAND HA	191 CHESTNUT AVE, VINELAND, NJ 08360	0	26,576
CITY OF LAS VEGAS HA	420 N. 10TH ST, LAS VEGAS, NV 89125	0	15,774
THE MUNI HA CITY OF YONKERS	1511 CENTRAL PARK AVE, YONKERS, NY 10710	0	118,980
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY 10007	0	393,560
ALBANY HA	4 LINCOLN SQUARE, ALBANY, NY 12202	0	28,332
HA OF MECHANICVILLE	HARRIS AVE, MECHANICVILLE, NY 12118	0	21,990
THE CITY OF NEW YORK, DHPD	100 GOLD ST, RM 5N, NEW YORK, NY 10038	0	380,720
NEW YORK STATE HSG FIN AGENCY	25 BEAVER ST, RM 674, NEW YORK, NY 10007	0	802,462
COLUMBUS METRO HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	0	2,500
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	0	391,666
AKRON MHA	100 W. CEDAR ST, AKRON, OH 44307	0	89,022
MANSFIELD MHA	P.O. BOX 1029, MANSFIELD, OH 44901	0	30,750
CLERMONT METRO HA	65 SOUTH MARKET ST, BATAVIA, OH 45103	0	2,352
HAMILTON COUNTY PHA	138 EAST COURT ST ROOM 507, CINCINNATI, OH 45202	0	750
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	6,968
PHILADELPHIA HA	12 SOUTH 23RD ST, PHILADELPHIA, PA 19103	0	48,056
CHESTER HA	1010 MADISON ST, CHESTER, PA 19016	0	70,382
CITY OF SPARTANBURG HA	P.O. BOX 2828, SPARTANBURG, SC 29304	0	6,000
HA GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	0	2,250
HA SOUTH CAROLINA REG NO 1	P.O. BOX 326, LAURENS, SC 29360	0	2,544
KNOXVILLE COMM DEV CORP	P.O. BOX 3550, KNOXVILLE, TN 37927	0	201,876
HARRIS COUNTY HA	8410 LANTERN POINT, HOUSTON, TX 77054	0	5,500
CITY OF SEATTLE	120 SIXTH AVE NORTH, SEATTLE, WA 98109	0	6,750
EAU CLAIRE HA	203 S FARWELL ST, EAU CLAIRE, WI 54702	0	15,654
Total for Tenant Protection Administrative Fees (SY 2003).		0	5,380,270
RENT SUPPLEMENTS			
THE CITY OF NEW YORK, DHPD	100 GOLD ST, RM 5N, NEW YORK, NY 10038	40	253,040
HA CITY OF TACOMA	902 SOUTH "L" ST, STE 2C, TACOMA, WA 98405	574	4,025,705
Total for Rent Supplements		614	4,278,744
Grand Totals		26,787	183,855,849

[FR Doc. 04–3547 Filed 2–18–04; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–05]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2004–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2004–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) will be available to qualified bidders on or about February 24, 2004. Bids for the loans must be submitted on the bid date, which is currently scheduled for March 30, 2004. HUD anticipates that awards will be made on or before April 2, 2004. Closings are expected to take place between April 5, 2004 and April 16, 2004.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm*. The executed documents must be mailed and faxed to Owusu & Company, HUD's transaction specialist for the sale, at 1900 L Street, NW., Suite 300, Washington, DC 20036, Attention: MHLS 2004–1 Sale Coordinator, Fax: (202) 223–7293.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2625, extension 3369 or Stephanie Chaharbaghi, Attorney-Advisor, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5231. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2004–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2004–1. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between April 5, 2004 and April 16, 2004.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2004–1. Qualified bidders will be able to access loan information at a due diligence facility or remotely via a high speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2004–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR. 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2004–1:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2004–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2004–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2004–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before February 29, 2004, audited financial statements for 1998 through 2003 for a project securing a Mortgage Loan; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before February 29, 2004.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the 2-year period prior to February 29, 2004, with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2004–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2004–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan within a pool of loans, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2004–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2004–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 11, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–3546 Filed 2–18–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Revised Comprehensive Conservation Plan for the Alaska Peninsula and Becharof National Wildlife Refuges

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Draft Revised Comprehensive Conservation Plan (Draft Conservation Plan) and Environmental Impact Statement for the Alaska Peninsula and Becharof National Wildlife Refuges is available for review and comment. This Draft Conservation Plan was prepared pursuant to the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. It describes how the Service intends to manage these Refuges over the next 15 years.

DATES: Please submit comments on the Draft Conservation Plan and Environmental Impact Statement on or before April 19, 2004.

ADDRESSES: A copy of the Draft Conservation Plan is available on compact diskette or hard copy, and you may obtain a copy by writing to: Peter Wikoff, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, AK 99503. You may also access or download copies of the Draft Conservation Plan at the following Web site address: *http://alaska.fws.gov/planning.* Comments may be sent to the above address or to: *fw7_apb_planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Wikoff, 907–786–3837.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) requires a conservation plan for all refuges in Alaska. We developed this Draft Conservation Plan consistent with section 304(g) of ANILCA and the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997. The purpose in developing conservation plans is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the conservation plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these plans in accordance with planning direction in § 304(g) of ANILCA and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Background: The Draft Conservation Plan and Environmental Impact Statement is a revision of plans which were adopted in 1985 and 1987. It combines plans for the Becharof NWR and portions of the Alaska Peninsula and Alaska Maritime NWRs, which are managed jointly as the Alaska Peninsula and Becharof National Wildlife Refuges. This draft plan provides broad general direction for managing the Refuges for the next 15 years and contains the vision, goals, and objectives of the Refuges. Except for alternative ways of addressing the issues, this plan substantially follows the direction of the original plans. Traditional means of access and uses of the Refuges would be maintained under all alternatives.

The Alaska Peninsula and Becharof National Wildlife Refuges are comprised of the Becharof NWR, the Ugashik and Chignik Units of the Alaska Peninsula NWR, and the Seal Cape Unit of the Alaska Maritime NWR. The Refuges encompass approximately 4,240,000 acres along the Pacific side of the Alaska Peninsula, starting about 10 miles south of the Refuge headquarters in King Salmon and extending for approximately 250 miles.

The Alaska Peninsula is a land of towering mountains, active volcanoes, broad valleys, fjords, tundra, and glacially formed lakes. From the coastal lowlands on the Bristol Bay side of the Refuges the land rises to steep glaciated mountains and volcanoes, and then plunges to cliffs and sandy beaches on the Pacific side. The Bristol Bay side of the Refuges consists primarily of rolling moist to wet tundra, lakes, and wetlands. The snow-covered, heavily glaciated Aleutian Mountain Range bisects the Refuges with volcanic peaks rising to more than 8,200 feet. The Pacific coastline is rugged with sea cliffs rising hundreds of feet from the water. Numerous streams and several large rivers originate within the Refuges.

The Becharof National Wildlife Refuge contains the 300,000-acre Becharof Lake, the second largest lake in Alaska, and the 503,000-acre Becharof Wilderness Area. Mt. Peulik, a 4,800-foot volcano with lava flows reaching to Becharof Lake is a prominent landmark.

The Alaska Peninsula National Wildlife Refuge contains the culturally and economically important Ugashik Lakes. The area around Mother Goose Lake provides important habitat for moose and a number of bird species. Volcanoes have been active in the recent past. Mt. Veniaminof, a stratovolcano with a base 30 miles in diameter and a summit crater 20 miles in circumference, last erupted from 1993 to 1995. Mt. Veniaminof has the most extensive crater glacier in the United States and is the only known glacier on the continent with an active volcanic vent in its center. The 800,000-acre Mt. Veniaminof National Natural Landmark recognizes the unique qualities of this area.

The Alaska Maritime National Wildlife Refuge includes Federally-owned islands, sea stacks, columns, islets, and rocks off the coast of Alaska. Seal Cape, a 9,900-acre headland, is the only part of the Alaska Maritime Refuge included in this Draft Conservation Plan. Narrow bays cut Seal Cape into two main arms which rise to peaks of more than 2,000 feet.

More than 2,000 people live in 12 communities located near the Refuges. The region is characterized by a mixed cash-subsistence economy. The cash economy is dominated by commercial fishing, tourism, and government employment. The Refuges sustain nearly 1,500 local jobs and contribute $70 million in income annually to the local economy, nearly all through supporting the commercial fishery by providing salmon spawning and rearing habitat.

Issues raised during scoping and addressed in this Draft Revised Conservation Plan are: (1) Access to remote and sensitive areas; and (2) conflicts between Refuge user groups.

This Draft Revised Conservation Plan identifies and evaluates three alternatives for managing the Refuges for the next 15 years. These alternatives follow the same general management direction but provide different ways of addressing the issues.

Alternative 1: No Action: Management of the Refuges would continue to follow the current course of action as identified and described in the existing plans and Records of Decision for these Refuges. The ranges and intensities of management activities would be maintained. Private and commercial uses of the Refuges would be unchanged. Refuge management would continue to reflect existing laws, executive orders, regulations, and policies governing Service administration and operation of the National Wildlife Refuge System. Helicopter landings for recreational purposes may be allowed outside of designated Wilderness on a case-by-case basis.

Alternative 2: There would be no changes in the way lands are managed or in how the public can access the Refuges. Research and monitoring provide clearer goals and objectives for increasing our knowledge of wildlife and habitat needs and relationships. Public use monitoring would facilitate wildlife dependent recreation, subsistence, and other traditional uses. Helicopter landings for recreational purposes would not be allowed in sensitive resource areas, at sensitive times, or where remoteness was a primary quality of the area. Landings could be considered in other areas. The Service would develop a process for identifying sensitive areas, in cooperation with the State of Alaska and other interested parties.

Alternative 3: Preferred Alternative: Research and monitoring provide clearer goals and objectives for increasing our knowledge of wildlife and habitat needs and relationships. Public use monitoring would provide clearer goals for facilitating wildlife dependent recreation, subsistence, and other traditional uses. Helicopter landings for recreational access would not be allowed. The boundary of the Yantarni Bay Moderate Management Area would be adjusted to coincide with geographically identifiable features while maintaining off-road vehicle (ORV) trails and areas of moderate use.

Comment Period: Sixty (60) days from date of publication of this notice.

Public Meetings: Meetings will be held in villages near the Refuges and in Anchorage. Dates to be determined by weather and logistics.

Availability of Documents: Copies of this Draft Revised Conservation Plan may be obtained by writing to the U.S. Fish and Wildlife Service, Attention: Peter Wikoff, 1011 East Tudor Road, MS 231, Anchorage, AK 99503; telephone (907) 786–3837; fax (907) 786–3965; or e-mail *peter_wikoff@fws.gov*. Copies of the Draft Conservation Plan may be viewed at the Refuge Office in King Salmon, Alaska, local libraries, and the U.S. Fish and Wildlife Service Regional Office, Anchorage, Alaska. The Draft Conservation Plan is available online at *http://www.r7.fws.gov/planning*.

Your Comments: Comments may be addressed to Peter Wikoff, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, AK 99503 or *fw7_apb_planning@fws.gov*.

Dated: January 9, 2004.

Rowan W. Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 04–3592 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Impact Statement for Rocky Flats National Wildlife Refuge, Commerce City, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan and Environmental Impact Statement (CCP/EIS) for the Rocky Flats National Wildlife Refuge (Refuge) is available for public review and comment. This Draft CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act (NEPA). The Draft CCP/EIS describes the Service's proposal for management of the Refuge for 15 years, beginning at Refuge establishment, which is anticipated to occur sometime between 2006 and 2008. Four alternatives for management of the Refuge are considered in the CCP/EIS.

DATES: To ensure consideration, we must receive your comments on or before April 5, 2004.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EIS, please write to Laurie

Shannon, Planning Team Leader, Rocky Flats National Wildlife Refuge, Rocky Mountain Arsenal—Building 121, Commerce City, Colorado, 80222. Comments and requests can be sent electronically to *http://rockyflats@fws.gov*. Additionally, copies of the Draft CCP/EIS may be downloaded from the project website: *http://rockyflats.fws.gov*. The Draft CCP/EIS will be available for reading at the following main branch libraries: Arvada Public Library in Arvada, Boulder Public Library in Boulder, Daniels Library in Lakewood, Golden Public Library in Golden, Westminster Public Library in Westminster, Front Range Community College in Westminster, Louisville Public Library in Louisville, Thornton Public Library in Thornton, and Mamie Dowd Eisenhower Library in Broomfield, all Colorado.

The Service will hold four public hearings on the CCP/EIS and encourages you to attend and provide your comments at one of the meetings. The time and place of the meetings will be provided in a Planning Update mailed to agencies, organizations and individuals on the mailing list, in a flyer posted in area libraries, in notices in area newspapers, and on the project Web site.

FOR FURTHER INFORMATION CONTACT: Laurie Shannon, Planning Team Leader at the above address or at (303) 289–0980.

SUPPLEMENTARY INFORMATION: The 6,240-acre Rocky Flats National Wildlife Refuge site is in northern Jefferson County and southern Boulder County, Colorado. The Rocky Flats site was used as a nuclear weapons production facility until 1992, when the mission of Rocky Flats changed to environmental cleanup and closure. The majority of the site has remained undisturbed for over 50 years and provides habitat for many wildlife species, including the federally threatened Preble's meadow jumping mouse, and several rare plant communities. Under the Rocky Flats National Wildlife Refuge Act of 2001, most of the site will become a National Wildlife Refuge once cleanup and closure has been completed. The Refuge will likely be established sometime between 2006 and 2008.

The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires the Service to develop a CCP for the Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, wildlife observation and photography, and environmental education and interpretation.

Significant issues addressed in the Draft CCP/EIS include: vegetation management, wildlife management, public use, cultural resources, property, infrastructure, and refuge operations. The Service developed four alternatives for management of the Refuge: Alternative A—No Action; Alternative B—Wildlife, Habitat, and Public Use; Alternative C—Ecological Restoration; and Alternative D—Public Use. All four alternatives outline specific management objectives and strategies related to wildlife and habitat management; public use, education, and interpretation; safety; open and effective communication; working with others; and refuge operations.

Alternative B, the Service's Proposed Action, emphasizes wildlife and habitat conservation with a moderate amount of wildlife-dependent public use. Refuge-wide habitat conservation would include management of native plant communities, weeds, restoration tools, removal and revegetation of unused roads and stream crossings, management of deer and elk populations, prairie dogs, and protection of Preble's meadow jumping mouse habitat. Visitor use facilities would include about 16 miles of trails, a visitor contact station staffed seasonally, trailheads with parking, and developed overlooks. Most of the trails would use existing roads and public access would be by foot, bicycle, horse, or car. A limited public hunting program would be developed.

After the review and comment period for this Draft CCP/EIS, all comments will be analyzed and considered by the Service. A Final CCP/EIS will then be prepared and published and will include substantive comments received and the Service's responses to those comments. Changes made to the proposed action will also be identified in the Final CCP/EIS. A Record of Decision and final CCP will then be published.

All comments received from individuals on environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f) and other Service and Departmental policies and procedures.

The Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers should provide the Service with their comments during the review period of the Draft CCP/EIS. This enables the Service to analyze and respond to the comments at one time and to use information acquired in the preparation of the final environmental impact statement, thus avoiding undue delay in the decision making process. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewers' position and contentions. Environmental objections that could have been raised at the draft stage may be waived if they are not raised until after completion of the final environmental impact statement. Comments on the Draft CCP/EIS should be specific and should address the adequacy of the plan, the impact statement, and the merits of the alternatives discussed (40 CFR 1503.3).

In the Final EIS, the Service will respond to all substantive comments. Comments are considered substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental analysis;
- Present reasonable alternatives other than those presented in the EIS;
- Cause changes or revisions in the CCP; or
- Provide new or additional information relevant to the analysis.

Dated: January 14, 2004.

John A. Blankenship,

Regional Director—Region 6, U.S. Fish and Wildlife Service, Lakewood, Colorado.

[FR Doc. 04–3584 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Grand Cote National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Grand

Cote National Wildlife Refuge located in Avoyelles Parish, Louisiana.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process. Open house style meetings will be held throughout the scoping phase of the comprehensive conservation plan development process.

DATES: To ensure consideration, we must receive written comments on or before April 5, 2004.

ADDRESSES: Address comments, questions, and requests for more information to Tina Chouinard, Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, 401 Island Road, Marksville, Louisiana 71351.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. This plan guides management decisions and identifies the goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into this planning process is essential.

Grand Cote National Wildlife Refuge was established in 1989 to provide wintering habitat for mallards, pintails, blue-winged teal, and wood ducks, as well as production habitat for wood ducks to meet the goals of the North American Waterfowl Management Plan. Additional objectives of the refuge include providing habitat for threatened and endangered species, providing habitat for a natural diversity of plant and wildlife species, and providing opportunities for wildlife-oriented recreation and environmental education when compatible with other refuge objectives.

Grand Cote Refuge, consisting of 6,075 acres, is a component of the Central Louisiana National Wildlife Refuge Complex, which includes Lake Ophelia and Cat Island Refuges, three fee title Farmers Home Administration tracts, and thirteen conservation easements located in four central Louisiana Parishes.

FOR FURTHER INFORMATION CONTACT: Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, telephone: 318/253–4238; fax: 318/253–7139; e-mail: *tina_chouinard@fws.gov*; or mail (write to the Natural Resource Planner at address in **ADDRESSES** section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 29, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04–3491 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0059). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192, or e-mail (*jcordyac@usgs.gov*).

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Comprehensive Test Ban Treaty.

Current OMB approval number: 1028–0059.

Abstract: The information, required by the Comprehensive Test Ban Treaty (CTBT), will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

Bureau form number: 9–4040–A.

Frequency: Annual.

Description of respondents: Companies that have conducted in the last calendar year, or that will conduct in the next calendar year, explosions with a total charge size of 300 tons of TNT-equivalent, or greater.

Annual Responses: 3,000.

Annual burden hours: 750.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–3649 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction

Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0062). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192, or e-mail (*jcordyac@usgs.gov*).

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Industrial Minerals Surveys.

Current OMB approval number: 1028–0062.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonfuel mineral commodities. This information will be published as monthly, quarterly, semiannual, and annual reports for use by Government agencies, industry, and the general public.

Bureau form number: Various (41 forms).

Frequency: Monthly, Quarterly, Semiannual, and Annual.

Description of respondents: Producers and Consumers of Industrial Minerals.

Annual Responses: 18,437.

Annual burden hours: 12,782.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–3650 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0065). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192, or e-mail (*jcordyac@usgs.gov*).

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Production Estimate, Construction Sand and Gravel and Crushed and Broken Stone.

Current OMB approval number: 1028–0065.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form number: 9–4042–A and 9–4124–A.

Frequency: Quarterly and Annually.

Description of respondents: Producers of industrial minerals and metals.

Annual responses: 3,269.

Annual burden hours: 707.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–3651 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability for the Record of Decision and Plan of Operations Approval for the Phoenix Project Final Environmental Impact Statement; Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) has issued a Record of Decision for the Phoenix Project Final Environmental Impact Statement (EIS) and Plan of Operations Approval for the Phoenix Project in Lander County, NV.

EFFECTIVE DATE: Appeals of the decision must be post-marked or otherwise delivered by 4:30 p.m. thirty days after the date of the publication of the notice in the **Federal Register**.

ADDRESSES: Copies of the Record of Decision are available at the BLM, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Pam Jarnecke, Battle Mountain BLM at (775) 635–4144.

SUPPLEMENTARY INFORMATION: Battle Mountain Gold Company (BMG), a wholly owned subsidiary of Newmont Mining Corporation, has been approved to expand its current operations near Battle Mountain, Nevada, to include mining and beneficiation of gold, silver, and copper ores. The proposed Phoenix Project would require up to an additional 4,308 acres of disturbance. BMG would develop the Phoenix and Reona pits and expand the Midas and Iron Canyon pits. Mining these ore deposits would be coupled with excavating and beneficiating low-grade gold ore stockpiles associated with the previous Tomboy, Northeast Extension, and Fortitude mining operations. Beneficiation operations would include heap leach facility expansion and new milling facilities. The projected mine life is up to 28 years, followed by 5 years of reclamation.

Dated: December 2, 2003.

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. 04–3484 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 120 5882 CC99; HAG# 04–0101]

Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

February 12, 2004.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in section 205(f)(2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: The BLM Coos Bay District RAC will be meeting on February 26, 2004 from 1 p.m. until 4:30 p.m. at the North Bend Public Library. The North Bend Public Library is located at 1800 Sherman Avenue in North Bend, Oregon. The purpose of this meeting will be for the RAC to discuss funding for an organic noxious weed control project, discuss RAC communication issues, and elect a Chairperson.

FOR FURTHER INFORMATION CONTACT: Sue Richardson, District Manager, at 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at 751–4361 or *glenn_harkleroad@or.blm.gov*. The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

SUPPLEMENTARY INFORMATION: Additional information about the Coos Bay RAC agenda can be found at *www.or.blm.gov/coosbay*. A meeting agenda will be posted at this site as the meeting date nears.

Dated: February 12, 2004.

Richard Conrad,

Acting: Coos Bay District Manager.

[FR Doc. 04–3585 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on March 11, 2004. The agenda for the meeting will include staff updates on the February meeting of the California Bay-Delta Authority; consideration of subcommittee recommendations; and discussion of the CALFED Bay-Delta Program priorities, the Delta Improvements Package, surface storage investigations, and implementation of the CALFED Bay-Delta Program with State and Federal agency representatives.

DATES: The meeting will be held Thursday, March 11, 2004, from 9 a.m. to 5 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the California Bay-Delta Authority offices at 650 Capitol Mall, 5th Floor, Bay-Delta Room, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Heidi Rooks, California Bay-Delta Authority, at (916) 445–5511, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide recommendations to the Secretary of the Interior, other participating Federal agencies, the Governor of the State of California, and the California Bay-Delta Authority on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting material will be available on the California Bay-Delta Authority Web site at *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Pub. L. 102–575)

February 2, 2004.

Allan Oto,

Special Projects Officer, Mid-Pacific Region.

[FR Doc. 04–3586 Filed 2–18–04; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–776–779 (Review)]

Preserved Mushrooms from Chile, China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules

of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On February 6, 2004, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (68 FR 62322, November 3, 2003) was adequate. The respondent interested party group response concerning preserved mushrooms from Indonesia was also found by the Commission to be adequate but the respondent interested party group responses concerning preserved mushrooms from Chile, China, and India were found by the Commission to be inadequate. The Commission also determined that other circumstances warranted conducting full reviews of all subject orders. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 13, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–3605 Filed 2–18–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,916]

Diamond Crown Company, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2003 in response to a worker petition filed by a company official on behalf of workers at Diamond Crown Company, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, this investigation has been terminated.

Signed at Washington, DC, this 3rd day of February, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3566 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,222]

Eastman Kodak Company Film Finishing Operations Rochester, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 21, 2003, applicable to workers of Eastman Kodak Company, Film Finishing Operations located in Rochester, New York. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce 35mm consumer film and associated components.

The review shows that the company provided information in response to questions from the Department with respect to Alternative Trade Adjustment Assistance (ATAA) that were not addressed in the decision document. The Department has determined that this information together with consumer film industry information warrants ATAA certification for workers of the subject firm.

Therefore, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–53,222 is hereby issued as follows:

All workers of the Eastman Kodak Company, Film Finishing Operations, Rochester, New York, who became totally or partially separated from employment on or after October 10, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of February 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3571 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,830]

J.S. Technos Corporation A Subsidiary of Bosch Corporation Russellville, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, investigation was initiated on December 18, 2003 in response to a worker petition filed by a company official on behalf of the workers at J.S. Technos, a subsidiary of Robert Bosch Corporation, Russellville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 4th day of February 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3569 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,893]

Johnston Industries, Inc., Dewitt, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December

29, 2003 in response to a petition filed on behalf of workers at Johnston Industries, Inc., DeWitt, Iowa.

The petitioning group of workers is covered by an active certification issued on January 15, 2004 (TA–W–53,723C) which remains in effect. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of February 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3567 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,101]

M.F. Maghee Log Homes, Yamhill, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2004 in response to a worker petition filed by the company owner on behalf of workers at M. F. Maghee Log Homes, Yamhill, Oregon.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC this 2nd day of February 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3563 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,107]

Manpower, Inc., Roswell, NM; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2004, in response to a worker petition filed by one worker on behalf of workers of Manpower Inc., Roswell, New Mexico.

To be valid, petitions must be filed by three workers, their duly authorized representative, or a State agency. The petition regarding the investigation has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 6th day of February, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3562 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,710]

Southill Industrial Carving Thomasville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 4, 2003 in response to a petition filed by a company official on behalf of workers at Southill Industrial Carving, Thomasville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3570 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,027]

St. George Crystal, Jeannette, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2004 in response to a worker petition filed by a company official on behalf of workers at St. George Crystal, Jeannette, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 2nd day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3565 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,877, TA–W–53,877A, TA–W–53,877B, TA–W–53,877C]

Unifrax Corporation, Niagara Falls, NY; Unifrax Corporation, Tonowanda, NY; Unifrax Corporation, Amherst, NY; Unifrax Corporation, New Carlisle, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 24, 2003, in response to a worker petition filed by the company on behalf of workers at Unifrax Corporation locations in Niagara Falls, New York, Tonowanda, New York, Amherst, New York, and New Carlisle, Indiana.

The petitioner has requested that the petition be withdrawn. The petitioner will re-file at a later date. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3568 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,058]

Winalta USA, Linton, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 21, 2004 in response to a worker petition filed on behalf of workers at Winalta USA, Linton, Indiana.

The Department issued a negative determination applicable to the petitioning group of workers on January 13, 2004 (TA–W–53,942). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further

investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–3564 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. CONSOL of Kentucky, Inc.

[Docket No. M–2004–002–C]

CONSOL of Kentucky, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101–8 (Water sprinkler systems; arrangement of sprinklers) to its Jones Fork E–3 Mine (MSHA I.D. No. 15–18589) located in Knott County, Kentucky. The petitioner requests a modification of the existing standard to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Jones Fork E–3 Mine. The petitioner proposes to: (i) Use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit and the water pressure equal to or greater than 10 psi; (ii) locate automatic sprinklers not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; (iii) conduct a test during installation of each new system and during any subsequent repair or replacement of any critical part thereof; (iv) conduct a functional test to insure proper operation during subsequent repair or replacement of any critical part thereof; and (v) conduct an annual functional test of each sprinkler system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Paramont Coal Company, LLC

[Docket No. M–2004–003–C]

Paramont Coal Company, LLC, 514 Front Street W., P.O. Drawer 1997, Coeburn, Virginia 24230–1997 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its VICC#8 Mine (MSHA I.D. No. 44–06906) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to allow placement of scalp rock in an area containing abandoned mine openings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Consolidation Coal Company

[Docket No. M–2004–004–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15341 has filed a petition to modify the application of 30 CFR 75.1101–8 (Water sprinkler systems; arrangement of sprinklers) to its (MSHA I.D. No. 44–03932) located in Tazewell County, Virginia. The petitioner requests a modification of the existing standard to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi. The petitioner also proposes to have automatic sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; conduct a test to insure proper operation during the installation of each new system and during any subsequent repair or replacement of any critical part of the sprinkler system; conduct a functional test to insure proper operation during subsequent repair or replacement of any critical part of the sprinklers system; and conduct functional test on an annual basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. RAG Emerald Resources, L.P.

[Docket No. M–2004–005–C]

RAG Emerald Resources, L.P., One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.312 (Main mine fan examinations and records) to its Emerald Mine (MSHA I.D. No. 36–05018) located in Greene County, Pennsylvania. The petitioner proposes to test its fans without removing the miners from the mine. The petitioner has listed specific procedures in this petition that would be followed when fans are being tested. The petitioner states that if an unplanned fan stoppage occurs, personnel will be withdrawn from the mine only if the fan is not restored within 15 minutes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Consol Pennsylvania Coal Company

[Docket No. M–2004–006–C]

Abate Irwin, Inc., 62 Eighty Four Drive, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 77.1710(g) (Protective clothing; requirements) at the Consol Pennsylvania Coal Company's Bailey Mine Preparation Plant (MSHA I.D. No. 36–07230) located in Greene County, Pennsylvania. The petitioner requests a modification of the existing standard to allow an alternative method to erect structural steel. The petitioner has been awarded a contract to erect the structural steel for the Bailey Mine Preparation Plant addition, which includes the erection of a tower crane, MCC Building, and the Preparation Plant addition, slated to begin in February 2004 and last through August 2004. Manpower will consist of approximately 16 Ironworkers from Local 549 in Wheeling, West Virginia. The petitioner requests that erection of the structural steel be approved under the Occupational Safety and Health Administration (OSHA) standard set forth in 29 CFR 1926.750. The petitioner asserts that the safety of the employees will not be compromised in any way and that safety will be increased by using the OSHA steel erection standard.

6. Cotter Corporation

[Docket No. M–2004–001–M]

Cotter Corporation, 7800 E. Dorado Place, Suite 210, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 57.14130(a)(4) (Roll-over protective structures (ROPS) and seat belts for surface equipment) to its C–JD–9 Mine (MSHA I.D. No. 05–03066) located in Montrose County, Colorado. The petitioner requests a modification of the existing standard to permit the use of underground haulage trucks without roll-over protection and seat belts on the surface of the C–JD–9

Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 22, 2004. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 12th day of February, 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–3572 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Veterans' Employment and Training

President's National Hire Veterans Committee; Notice of Open Meeting

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 note Public Law 107–288, Jobs For Veterans Act, to furnish information to employers with respect to the training and skills of veterans and disabled veterans, and the advantages afforded employers by hiring veterans with such training and skills and to facilitate employment of veterans and disabled veterans through participation in Career One Stop national labor exchange, and other means.

The President's National Hire Veterans Committee will meet on Wednesday, February 25, 2004, beginning at 2 p.m. at the Rayburn House Office Building, Washington, DC 20515, Room 2216.

The committee will discuss raising employers awareness of the advantages of hiring veterans.

Signed at Washington, DC this 12th day of February, 2004.

Frederico Juarbe Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 04–3556 Filed 2–18–04; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 5, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001;

E-mail: records.mgt@nara.gov;

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–03–1, 9 items, 9 temporary items).

Records relating to state meat and poultry inspection programs. Included are such records as state performance plans, agreements, comprehensive reviews, quarterly reports, and electronic copies of records created using electronic mail and word processing.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–4, 16 items, 16 temporary items). Records of Weather Forecast Offices and River Forecast Centers relating to the management of observation stations and to the evaluation of the quality of the observations they produce. Included are such records as station management files, station inspection files, station disaster preparedness files, station duty manuals, and electronic copies of records created using electronic mail and word processing.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–5, 45 items, 45 temporary items). Records of the National Weather Service's Office of Operational Systems. Included are files relating to such matters as radio frequency assignments, spectrum allocation, interference cases, and software recommendations. Also included are data, system documentation, inputs, and outputs associated with such systems as the Automated Surface Observing System, the Engineering Management Reporting System, the Unscheduled Outage System, the Management Information Retrieval System, and systems used for tracking software updates to agency radar systems. Also included are weather-observing site/system commissioning files, equipment testing files, after-action and status reports, weather radio coverage maps, high frequency satellite communication systems files, and electronic copies of records created using electronic mail and word processing.

4. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–02–2, 6 items, 4 temporary items). Routine supporting documents relating to manuscripts and final reports of research studies. Included are records relating to administrative and logistical aspects of studies and other records that do not contribute to the understanding of the final report. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of reports and substantive supporting materials are proposed for permanent retention.

5. Department of Homeland Security, Transportation Security Administration (N1–560–03–6, 11 items, 10 temporary items). Correspondence, incident reports, investigative files, and security monitoring camera images accumulated by the Office of Security. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of annual Freedom of Information Act reports.

6. Department of Homeland Security, United States Coast Guard (N1–26–04–2, 1 item, 1 temporary item). Strip charts containing data used to ensure the accuracy of the Omega radio navigation system. Records, which were accumulated 1973–1984, were previously approved for permanent retention.

7. Department of Justice, Drug Enforcement Administration (N1–170–04–1, 9 items, 9 temporary items). Polygraph program files documenting the findings and conclusions of polygraph examinations performed in support of drug enforcement investigations, employment applications, and integrity issues. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–03–5, 10 items, 4 temporary items). Outputs of the National Field Office Case Information System, which is used to collect, disseminate, manage, and analyze investigative and inspection data. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are the master data files relating to investigations and inspections, along with public use versions, and related system documentation.

9. Department of Justice, Federal Bureau of Investigation (N1–65–04–1, 2 items, 2 temporary items). Documentation created as a result of career board deliberations relating to filling special agent vacancies at the GS–14 and GS–15 level, including electronic copies of records created using electronic mail and word processing.

10. Department of Labor, Employment Standards Administration (N1–271–02–1, 138 items, 128 temporary items). Revised comprehensive schedule for the Office of Workers' Compensation Programs (OWCP), including the Divisions of Federal Employees' Compensation (FECA), Coal Mineworkers' Compensation, and Longshore and Harbor Workers' Compensation (DLHWC). Included are such records as FECA, Coal Mineworkers, and DLHWC compensation case files, summaries of payments for medical, rehabilitation, and other health services, listings of approved and excluded providers, general correspondence, subject files, work measurement reports, training and internal planning records, tracking and imaging systems, x-ray files, and speeches. Also included are electronic copies of documents created using electronic mail and word processing applications. Proposed for permanent retention are recordkeeping copies of such records as OWCP publications, DLHWC directives, published annual and special reports, OWCP directives and bulletins, FECA bulletins, and the Black Lung Accounting System, Claimant and Payment Subsystem and the Medical Bill Processing System databases.

11. Department of Labor, Bureau of Labor Statistics (N1–257–04–2, 8 items, 8 temporary items). Copies of collective bargaining agreements and related records, such as listings of agreements held by the agency and requests for copies received from the public. Agreements, which were previously approved for permanent retention, will be disposed of by transfer to the Kheel Center for Labor-Management Documentation at Cornell University.

12. Department of Labor, Bureau of Labor Statistics (N1–257–03–2, 7 items, 7 temporary items). Computer Century Conversion (Y2K) Files, including policy and planning files, system inventories, and verification reports. Also included are electronic copies of records created using word processing and electronic mail.

13. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–7, 7 items, 7 temporary items). Records relating to administrative services, including such records as A–76 studies, administrative services program files, and electronic systems used to track the distribution of forms and other administrative activities. Also included are electronic copies of records created using electronic mail and word processing.

14. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–8, 35 items, 35 temporary items). Records relating to security, including such records as investigation files, surveys, security research files, facility security files, building surveillance tapes, police activity and operations records, police training records, and police supply files. Also included are electronic copies of records

created using electronic mail and word processing.

15. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–22, 16 items, 15 temporary items). Records relating to agency policies and procedures including working files, bulletins, non-controlled directives, indexes to directives, and operational work instructions and manuals. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of manuals, circulars, and policy directives.

16. Federal Mediation and Conciliation Service, Office of Arbitration Services (N1–280–03–2, 16 items, 16 temporary items). Records relating to arbitration services, including such records as general correspondence, lists of arbitrators and information concerning them, requests for arbitration panels, and records relating to notices of appeal, including an electronic database. Also included are electronic copies of documents created using electronic mail and word processing.

17. Federal Mediation and Conciliation Service, Office of Education and Training (N1–280–03–3, 10 items, 9 temporary items). Records relating to education and training, such as needs evaluation and assessment records, employee training records, and financial records. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of training materials.

18. National Archives and Records Administration, Office of Records Service—Washington, DC (N2–257–03–1, 1 item, 1 temporary item). Copies of collective bargaining agreements covering the period 1891–1945 and 1958–1981 accumulated by the Bureau of Labor Statistics. Records were transferred to the National Archives but are not of sufficient historical value to warrant continued retention by the National Archives. Records will be disposed of by transfer to the Kheel Center for Labor-Management Documentation at Cornell University.

Dated: February 3, 2004.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 04–3555 Filed 2–18–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that that a teleconference meeting of the Leadership Initiatives Advisory Panel (Arts Education section) to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 on Wednesday, February 25, 2004, from 4 p.m. to 5:30 p.m. from Room 703. This meeting will be closed.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: February 13, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–3715 Filed 2–18–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The Title of the Information Collection:* NRC Form 314—Certificate of Disposition of Materials.

2. *Current OMB Approval Number:* 3150–0028.

3. *How Often the Collection is Required:* The form is submitted once, when a licensee terminates its license.

4. *Who is Required or Asked to Report:* Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

5. *The Number of Annual Respondents:* 310.

6. *The Number of Hours Needed Annually to Complete the Requirement or Request:* 155 hours.

7. *Abstract:* NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Submit, by April 19, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated in Rockville, Maryland, this 12th day of February, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–3561 Filed 2–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit No. 3; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc. (DNC or the licensee) is the holder of Facility Operating License No. NPF–49 which authorizes operation of Millstone Power Station, Unit No. 3 (MP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility consists of a pressurized water reactor located in Waterford, Connecticut.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) section 50.12, "Specific Exemptions," DNC, in a letter dated July 1, 2003, as supplemented November 10, 2003, requested an exemption to 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors"; 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors"; and Appendix K to 10 CFR Part 50, "ECCS Evaluation Models." The regulation in 10 CFR 50.44 specifies requirements for the control of hydrogen gas generated after a postulated loss-of-coolant accident (LOCA) for reactors fueled with zircaloy or ZIRLO™ cladding. Section 50.46 of 10 CFR contains acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR Part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. This exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 is needed to irradiate lead test assemblies (LTAs) comprised of a developmental alloy (Optimized ZIRLO™) at MP3.

3.0 Discussion

3.1 Material Evaluation

3.1.1 Fuel Mechanical Design

Tin is a solid solution strengthener and α-phase stabilizer present entirely in the base α-phase zirconium crystalline structure. Potential impacts of a reduced tin content on material properties include: (1) Reduced tensile strength; (2) an increased thermal creep rate; (3) an increased irradiation growth rate; (4) a reduced $\alpha \rightarrow \alpha + \beta$ phase transition temperature; and (5) an improved corrosion resistance. The stated reduction in tin content of Optimized ZIRLO™ will not affect the size, shape, or distribution of any second-phase or inter-metallic precipitates nor the overall microstructure of this developmental zirconium alloy. With a consistent microstructure, Optimized ZIRLO™ will exhibit many material characteristics similar to those of the licensed ZIRLO™.

In response to a Request for Additional Information (RAI), DNC provided details of the planned post-irradiation examinations of the LTAs. Measured parameters include rod profilometry, rod wear, assembly and rod growth, assembly bow, grid cell dimensions, and oxide thickness. As a result of these post-irradiation examinations, any negative aspects of the low tin alloy's performance, including the potential impacts of a reduced tin content identified above, will be identified and resolved. Furthermore, significant deviations from model predictions will be reconciled.

The fuel rod burnup and fuel duty experienced by the LTAs in MP3 will remain well within the operating experience base and applicable licensed limits for ZIRLO™.

Utilizing currently-approved fuel performance and fuel mechanical design models and methods, DNC and Westinghouse will perform cycle-specific reload evaluations to ensure that the LTAs satisfy design criteria.

Based upon LTA irradiation experience of similar low tin versions of ZIRLO™, expected performance due to similar material properties, and an extensive LTA post-irradiation examination program aimed at qualifying model predictions, the staff finds the LTA mechanical design acceptable for MP3.

3.1.2 Core Physics and Non-LOCA Safety Analysis

The MP3 exemption request relates solely to the specific types of cladding material specified in the regulations. Due to similar material properties, any impact of Optimized ZIRLO™ on the safety analysis models and methods is expected to be minimal. Utilizing currently-approved core physics, core thermal-hydraulics, and non-LOCA safety analysis models and methods, DNC and Westinghouse will perform cycle-specific reload evaluations to ensure that the LTAs satisfy design criteria.

Fuel management guidelines will require that LTAs be placed in non-limiting core locations. In response to an RAI, DNC described how power-peaking margins would be used to ensure that LTAs will not be limiting.

Based upon the use of approved models and methods, expected material performance, and the placement of LTAs in non-limiting core locations, the staff finds that the irradiation of up to eight LTAs in MP3 will not result in unsafe operation or violation of specified acceptable fuel design limits. Furthermore, in the event of a design-basis accident, these LTAs will not promote consequences beyond those currently analyzed. Based upon results of metal-water reaction tests and ring-compression tests, which ensure the applicability of ECCS models and acceptance criteria and the use of approved LOCA models to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria, the staff considers the LTAs acceptable for use at MP3 as proposed by DNC.

3.2 Regulatory Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 if: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present.

3.2.1 10 CFR 50.44

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. The LTA rods of Optimized ZIRLO™ cladding are similar in chemical composition to

zircaloy cladding. Metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP–12610–P–A) demonstrate comparable reaction rates. Accordingly, the previous calculations of hydrogen production resulting from a metal-water reaction will not be significantly changed. Granting the proposed exemption will not defeat the underlying purpose of 10 CFR 50.44.

3.2.2 10 CFR 50.46

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. The applicability of the ECCS acceptance criteria has been demonstrated by Westinghouse. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP–12610–P–A) demonstrate an acceptable retention of ductility up to 10 CFR 50.46 limits of 2200 °F and 17% Equivalent Cladding Reacted (ECR).

Utilizing currently approved LOCA models and methods, Westinghouse will perform cycle-specific reload evaluations to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria. Granting the proposed amendment will not defeat the underlying purpose of 10 CFR 50.46.

3.2.3 10 CFR Part 50, Appendix K

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP–12610–P–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Granting the proposed exemption will not defeat the underlying purpose of Appendix K, Paragraph I.A.5.

3.2.4 Special Circumstances

In summary, the staff reviewed the licensee's request of proposed exemption to allow up to eight LTAs containing fuel rods, guide thimble tubes, and instrumentation tubes fabricated with Optimized ZIRLO™. Based on the staff's evaluation, as set forth above, the staff considers that granting the proposed exemption will not defeat the underlying purpose of 10 CFR 50.44, 10 CFR 50.46, or Appendix K to 10 CFR part 50. Accordingly, special circumstances, are present pursuant to 10 CFR 50.12(a)(2)(ii).

3.2.5 Other Standards in 10 CFR 50.12

The staff examined the rest of the licensee's rationale to support the exemption request, and concluded that the use of Optimized ZIRLO™ would satisfy 10 CFR 50.12(a) as follows:

(1) The requested exemption is authorized by law:

No law precludes the activities covered by this exemption request. The Commission, based on technical reasons set forth in rulemaking records, specified the specific cladding materials identified in 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K. Cladding materials are not specified by statute.

(2) The requested exemption does not present an undue risk to the public health and safety as stated by the licensee:

The LTA reload evaluation will ensure that these acceptance criteria [in the Commission's regulations] are met following the insertion of LTAs containing Optimized ZIRLO™ material. Fuel assemblies using Optimized ZIRLO™ cladding will be evaluated using NRC-approved analytical methods and plant specific models to address the changes in the cladding material properties. The safety analysis for Millstone, Unit No. 3 is supported by the applicable technical specification. The Millstone, Unit No. 3 reload cores containing Optimized ZIRLO™ cladding are required to be operated in accordance with the operating limits specified in the technical specifications. As required by the technical specifications, the LTAs utilizing Optimized ZIRLO™ cladding will be placed in non-limiting core locations. Thus, the granting of this exemption request will not pose an undue risk to public health and safety.

The NRC staff has evaluated these considerations as set forth in Section 3.1 of this exemption. For the reasons set forth in that Section, the staff concludes that Optimized ZIRLO™ may be used as a cladding material for no more than eight LTAs to be placed in non-limiting core locations during MP3's next refueling outage, and that an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K does not pose an undue risk to the public health and safety.

(3) The requested exemption will not endanger the common defense and security:

The common defense and security are not affected and, therefore, not endangered by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants DNC an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow the use of Optimized ZIRLO™ as a cladding material in eight LTAs in the capacity described in their July 1, 2003 submittal, as supplemented November 10, 2003, up to a lead rod average burnup of 62,000 MWD/MTU.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 75291).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of February 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–3574 Filed 2–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–06068]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Canberra Industries, Inc.'s Facility in Warrington, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269; or by e-mail: *kad@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Canberra Industries, Inc. for Materials License No.

37–02401–01, to authorize release of its facility in Warrington, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Warrington, Pennsylvania facility for unrestricted use. Canberra Industries, Inc. was authorized by NRC from February 9, 1981 to use radioactive materials for research and development and distribution purposes at the Warrington, Pennsylvania site. On September 12, 2003, Canberra Industries, Inc. requested that NRC release the facility for unrestricted use. Canberra Industries, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Canberra Industries, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML032590641, ML032830096, ML040370670). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, of by e-mail to *pdr@nrc.gov*.

Dated at King of Prussia, Pennsylvania this 11th day of February, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–3560 Filed 2–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

National Materials Program; Announcement of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting a meeting to inform stakeholders of the status and progress of the National Materials Program (NMP) pilot projects and receive feedback on a range of issues involving the NMP. Areas of discussion will include each pilot project as well as focus on the future structure and framework of the NMP. The discussion and feedback will be used by the staff in the overall assessment report on the pilot projects.

DATES: A 1-day public meeting will be held Wednesday, March 31, 2004, from 8 a.m. to 3 p.m. at NRC Headquarters, in room T2–B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. To facilitate maximum information sharing, additional information on the NMP, including pilot projects, can be found at: *http://www.hsrd.ornl.gov/nrc/materials.htm*.

Travel Information: It is recommended that participants commute to the meeting via the Metrorail system (Metro). The White Flint Metro stop, along the red line, is adjacent to the White Flint Complex. There are limited parking spaces available in the area.

Notification of Attendance: It is strongly encouraged that prospective participants contact NRC prior to the meeting to expedite the required security processing for NRC visitors and to ensure that adequate copies of handouts are available. Contact Shawn Rochelle Smith, telephone: (301) 415–2620; e-mail: *srs3@nrc.gov*, and submit participant name, affiliated organization, telephone number, address, and citizenship status by March 29, 2004. Also, it is suggested that invited speakers as well as attendees, limit the amount of personal items and electronic devices brought into the building. Those needing accommodations under the Americans with Disabilities Act or having special concerns should contact Gwendolyn Davis in advance at (301) 415–2325; from outside the Washington, DC metropolitan area, call (800) 368–5642, extension 2325 or e-mail: *gxd@nrc.gov*. Persons needing accommodations that are planning to attend the meeting should contact Mrs. Davis and provide information that will facilitate entrance into the building the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Shawn Rochelle Smith, U.S. Nuclear Regulatory Commission, Office of State and Tribal Programs, Mail Stop: O3–C10, Washington, DC 20555; telephone: 301–415–2620; e-mail: *srs3@nrc.gov*. Questions about the public meeting process should be directed to Lance J. Rakovan, U.S. Nuclear Regulatory Commission, Office of State and Tribal Programs, Mail Stop: O3–C10, Washington, DC 20555; telephone: 301–415–2589; e-mail: *ljr2@nrc.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be conducted in two segments. The first segment will consist of presentations on the structure and framework of the NMP and the status of the NMP pilot projects. The second segment will be conducted in a "roundtable format" among invited participants representing the broad spectrum of interests that may be affected by the current or any changes to the structure and framework of the NMP. To help facilitate discussions, participants at the table will include representatives of radioactive material licensees, public interest groups, and Federal and State governments. Although the focus of the discussion will be among the invited participants, the meeting is open to the public and there will be opportunities to comment on each agenda item to be discussed by roundtable participants.

Dated in Rockville, Maryland, this 11th day of February, 2004.

For the U.S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

[FR Doc. 04–3559 Filed 2–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Utah: NRC Staff Draft Assessment of a Proposed Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: Second notice of a proposed amendment to the Agreement with the State of Utah; request for comment.

SUMMARY: By letter dated January 2, 2003, Governor Michael O. Leavitt of Utah requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an amendment to the Agreement with Utah (the Agreement) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed amendment to the Agreement, the Commission would relinquish, and Utah would assume, an additional portion of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed amendment to the Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the portion of the regulatory program Utah would assume. Comments are requested on the proposed amendment to the Agreement and the staff's draft assessment, which finds the program to be adequate to protect public health and safety and compatible with NRC's program for regulation of 11e.(2) byproduct material.

The proposed amendment to the Agreement would release (exempt) persons who possess or use certain radioactive materials in Utah from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires March 15, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following phrase [Utah Amendment] in the subject line of your comments. Comments will be made available to the public in their entirety. Personal information will not be removed from your comments.

Mail comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001.

E-mail comments to: NRCREP@nrc.gov.

Fax comments to: Chief, Rules and Directives Branch, at (301) 415–5144.

Publicly available documents related to this notice, including public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents available in ADAMS include: the request for an amended Agreement by the Governor of Utah including all information and documentation submitted in support of the request (ML030280380); NRC comments on the request (ML031810623), Utah's response to NRC comments (ML032060090); Utah's additional clarification (ML033640565), and the full text of the NRC Staff Draft Assessment (ML040370585).

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 16,850 material licenses, while NRC regulates approximately 4550 licenses. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274. Under the proposed amendment to the Agreement, four NRC licenses will transfer to Utah.

Section 274e requires that the terms of the proposed amendment to the Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This second Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated January 2, 2003, Governor Leavitt certified that the State of Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within Utah for the materials and activities specified in the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Utah requests authority over are: the possession and use of byproduct material as defined in Section 11e.(2) of the Act and the facilities that generate such material (uranium mill tailings and uranium mills). Included with the letter was the text of the proposed amendment to the Agreement, which has been edited and is shown in Appendix A to this Notice.

(b) The proposed amendment to the Agreement modifies the articles of the Agreement that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the amendment to the Agreement, with the effective date, will be published after the amendment to the Agreement is approved by the Commission and signed by the Chairman of the Commission and the Governor of Utah.

(c) Utah currently regulates all radioactive materials covered under the

[1] The radioactive materials are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

Act, except for conducting sealed source and device evaluations which will remain under NRC jurisdiction, and the possession and use of 11e.(2) byproduct material, which would be assumed by Utah under the proposed amendment to their Agreement. Section 19–3–113 of the Utah code provides the authority for the Governor to enter into an Agreement with the Commission. Section 19–3–113 also contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Utah licenses until the licenses expire or are replaced by State issued licenses. The regulatory program including 11e.(2) byproduct materials is authorized by law in Section 19–3–104.

(d) The NRC staff draft assessment finds that the Utah program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of 11e.(2) byproduct material and the facilities that generate such material.

II. Summary of the NRC Staff Draft Assessment of the Utah Program for the Control of 11e.(2) Byproduct Materials

The NRC staff has examined Utah's request for an amendment to the Agreement with respect to the ability of the Utah radiation control program to regulate 11e.(2) byproduct material. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," referred to herein as the "NRC criteria" (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The 11e.(2) byproduct material program will be located within the existing Division of Radiation Control (Program) of the Utah Department of Environmental Quality. The Program will be responsible for all regulatory activities related to the proposed amendment to the Agreement.

The Program performed an analysis of the expected Program workload under the proposed amendment to the Agreement and determined that a level of three technical and one administrative staff would be needed to implement the 11e.(2) byproduct material authority. The distribution of the qualifications of the individual technical staff members will be balanced with the technical expertise needed for 11e.(2) byproduct material (*i.e.*, health physics, hydrology, engineering). The Program currently has and intends to initially use existing qualified staff to conduct the 11e.(2) byproduct materials activities. At least two staff are qualified in each of the three technical areas identified in the Criteria: health physics, engineering, and hydrology.

The educational requirements for the 11e.(2) byproduct material program staff members are specified in the Utah State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection.

The Program also plans to hire three new staff into the program to supplement the existing staff (two professional/technical and one administrative). New staff hired into the Program will be qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

Based on the NRC staff review of the State's need analysis, current staff qualifications, and the current staff assignments for the 11e.(2) byproduct material program, the NRC staff concludes that Utah will have an adequate number of qualified staff assigned to regulate the 11e.(2) byproduct material workload of the Program under the terms of the amendment to the Agreement.

(b) *Legislation and Regulations.* The Utah Department of Environmental Quality (Department) is designated by law to be the implementing agency. The law establishes a Radiation Control Board (Board) that has the authority to issue regulations and has delegated the authority to the Executive Secretary the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. The Executive Secretary is the director of the Division of Radiation Control in the Department. Licensees are required to provide access to inspectors. The law requires the Board to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent. Utah has adopted R313–24 Utah Administrative Code that incorporates NRC uranium milling regulations by reference, with a few exceptions, and other regulatory changes needed for the 11e.(2) byproduct material program. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff. The final regulations were sent to NRC for review. The NRC staff review verified that, with the one exception of the alternative groundwater standards, the Utah rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The alternative groundwater standards were addressed in a separate Commission action (see 68 FR 51516; August 27, 2003 and 68 FR 60885; October 24, 2003) and will be resolved prior to the Commission's final approval of an amendment to the Agreement with Utah. The NRC staff also concludes that Utah will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Evaluation of License Applications.* Utah has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use 11e.(2) byproduct material. Utah will use its general licensing procedures, along with the additional requirements in R313–24 specific to 11e.(2) byproduct material. Utah will use the NRC regulatory guides as guidance in conducting its licensing reviews.

(d) *Inspections and Enforcement.* The Utah radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Utah Revised Statutes, procedures for the enforcement of regulatory requirements.

(e) *Regulatory Administration.* The Utah Department of Environmental Quality is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Utah law prescribes standards of ethical conduct for State employees.

(f) *Cooperation with Other Agencies.* Utah law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Utah. The law provides that these former NRC licenses will expire either 90 days after receipt from the Department of a notice of

expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. Utah also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Utah meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

NRC will continue the formal processing of the proposed amendment to the Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated at Rockville, Maryland, this 12th day of February, 2004.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A—Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

Whereas, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 19–3–113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

Whereas, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on January 2, 2003 that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in Section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

Whereas, the Commission found on [date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in Section 11e.(2) and is adequate to protect public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as C through E. Paragraph B will read as follows:

"B. Byproduct materials as defined in Section 11e.(2) of the Act;"

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

"E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission."

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States."

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

"ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done at Rockville, Maryland, in triplicate, this [day] day of [month, year].

For the United States Nuclear Regulatory Commission.
Nils J. Diaz,
Chairman.

Done at Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

For the State of Utah.
Olene S. Walker,
Governor.

[FR Doc. 04–3554 Filed 2–18–04; 8:45 am]
BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of modification to an existing system of records.

SUMMARY: This document publishes notice of modification to Privacy Act System of Records USPS 150.030, Records and Information Management Records—Computer Logon ID Records, 150.030. The proposed modification reflects changes to the system name, system location, categories of individuals covered by the system, categories of records in the system, purpose, storage, retrievability, safeguards, retention and disposal, system manager(s) and address, notification procedures, and records source categories.

DATES: Any interested party may submit written comments on the proposed modification. This proposal will become effective without further notice on March 30, 2004, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5846, Washington, DC 20260–5825. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rowena Dufford at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service™ is proposing to modify system of records, USPS 150.030, Records and Information Management Records—Computer Logon ID Records. The system contains identifying information about users who request access to Postal Service computers and information resources and the access rights authorized or denied, including the computer logon ID assigned to those users and the level of access granted to them. The computer logon ID is a code that identifies an individual as an authorized user, programmer, or operator of a computer system for use in conducting Postal Service business. This system of records is being modified to include an automated method of requesting, authorizing, denying, and/or revoking user access to Postal Service computers and information resources.

Automating computer access will enable the Postal Service to more effectively and securely manage access to computers and information resources. The paper process will be phased out over time as Postal Service systems and computer users are registered in the automated system.

The automated method provides for the request, review, approval, and tracking of computer system access for Postal Service computer systems users nationwide and enables online access request generation in lieu of completing hard copies of PS Form 1357, *Request for Computer Access,* and IS Form 1357–A, *Request for Inspection Service Computer ID.* Hard copy forms will continue to be used for access to Postal Service computers and information resources not managed electronically. Eventually, user access for all Postal Service computers and information resources will be automated, and hard copy forms will no longer be generated. Hard copy forms will continue to be retained in a secure environment at various Postal Service facilities for 1 year after access privileges are cancelled and then destroyed by shredding. Future developments may allow the Postal Service to scan and store the hard copy forms in an electronic format.

Under the automated method, a unique identifier (UID) is provided for each user, to be used throughout his or her Postal Service career or other involvement with the Postal Service as a logon ID for computers and information resources. User profiles contain summary information about all access authorizations, including both of the following:

- A complete view of all authorizations for a given user based on

multiple access request submissions over a period of time.

• The status of access transactions in the authorization and approval process.

Information from the user profile is used to formulate computer access requirements and assignments. Access assignments are used to protect against unauthorized access to Postal Service computer data and resources. Approval authorities are responsible for maintaining the currency of information in the user profile. Approved electronic requests are stored in a centralized, secure operating environment, updated as corresponding access requests are superceded or cancelled, and are deleted 1 year after access is cancelled.

The Postal Service does not expect modification of this system to have any effect on individual privacy rights. The amendment does not change the kinds of personal information about employees that are collected and maintained. Other information maintained about the individual relates to his or her official duty status and level of access permitted. Protection of the privacy interests of individuals covered by the system will be enhanced by eliminating much of the hard copy storage and the security of the automated system.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on the proposed part of this notice. A report of the proposed system change has been sent to Congress and to the Office of Management and Budget for their evaluation.

Privacy Act System of Records USPS 150.030 was last published in its entirety in the **Federal Register** on October 10, 1990 (55 FR 41282–41283) and was amended on February 23, 1999 (64 FR 8876–8892). The Postal Service proposes amending the system as shown below:

USPS 150.030

SYSTEM NAME:

[CHANGE TO READ:]

Computer Access Records, 150.030.

* * * * *

SYSTEM LOCATION:

[CHANGE TO READ:]

All Postal Service facilities; Information System Service Centers; Accounting Service Centers; Inspection Service facilities; and contractor sites.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ:]

Individuals who have access to Postal Service computers and information resources, including Postal Service employees, contractor employees, and non-Postal Service individuals.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ:]

This system contains identifying information about computer users and the corresponding authorizing managers such as name; logon ID; employee identification number, unique identifier, and/or Social Security number; work-related information such as job title, BA Code, finance number, and work telephone number and address; the application(s) that the user may access; and the level(s) of access granted. Additionally, the system contains information related to contractors such as verification of status of contractor employee, screening, and/or security clearances.

* * * * *

PURPOSE:

[CHANGE TO READ:]

To ensure access to data and/or files of computer systems is limited to authorized individuals through the use of computer security access control systems. Used by computer security officers in maintaining access controls, and by postal inspectors and authorized personnel in monitoring compliance with access rules. The logon IDs are also used as a positive user identifier in resolving access problems by telephone.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

[CHANGE TO READ:]

Automated databases, computer storage media, and paper.

* * * * *

RETRIEVABILITY:

[CHANGE TO READ:]

Name, logon ID, employee ID, and unique identifier.

* * * * *

SAFEGUARDS:

[CHANGE TO READ:]

Paper records, computers, and computer storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems and electronic records are also protected with security software and operating system controls, including logon and password identifications, firewalls, terminal and use identifications, and file management. Online data transmissions are protected by encryption. Access to these records is limited to authorized personnel. Contractors must provide similar protection subject to a security compliance review by the Postal Inspection Service.

* * * * *

RETENTION AND DISPOSAL:

[CHANGE TO READ:]

Paper records are retained for 1 year after computer access privileges are cancelled and then destroyed by shredding. Electronic records are updated as corresponding access requests are superceded or cancelled, and are deleted 1 year after access is cancelled.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ:]

VICE PRESIDENT, CHIEF TECHNOLOGY OFFICER, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLZ SW, WASHINGTON DC 20260–1500

CHIEF POSTAL INSPECTOR, INSPECTION SERVICE, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLZ SW, WASHINGTON DC 20260–2100

* * * * *

NOTIFICATION PROCEDURE:

[CHANGE TO READ:]

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries containing full name and logon ID, employee identification number, unique identifier and/or Social Security number to the following:

For hard copy PS Form 1357, *Request for Computer Access:* Individuals assigned to Headquarters should submit requests to the Manager, Headquarters Computing Infrastructure Services, 475 L'Enfant Plaza, SW, Washington, DC 20260.

Individuals assigned to other facilities should submit requests to the head of the facility that manages the information systems.

For electronic records to access Postal Service computers: Address requests to the Manager, Information Security Services, 4200 Wake Forest Rd., Raleigh, NC 27668–9500.

For U.S. Inspection Service computer access records: Address requests to the Inspector in Charge, Information Technology Division, 2111 Wilson

Blvd., Suite 500, Arlington, VA 22201–3036

* * * * *

RECORDS SOURCE CATEGORIES:

[CHANGE TO READ:]

Individuals requesting and/or approving access to Postal Service computers or information resources and Postal Service personnel charged with information systems security responsibilities.

* * * * *

Neva Watson,

Attorney.

[FR Doc. 04–3496 Filed 2–18–04; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 15c3–1f, SEC File No. 270–440, OMB Control No. 3235–0496.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule: 17 CFR 240.15c3–1f (Appendix F to Rule 15c3–1 ("Appendix F")).

Appendix F requires a broker-dealer choosing to register, upon Commission approval, as an OTC derivative dealer to develop and maintain an internal risk management system based on Value-at-Risk ("VAR") models. Appendix F also requires the OTC derivatives dealer to notify Commission staff of the system and of certain other periodic information including when the VAR model deviates from the actual performance of the OTC derivatives dealer's portfolio. It is anticipated that approximately six (6) broker-dealers will spend 1,000 hours per year complying with Appendix F. The total burden is estimated to be approximately 6,000 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 11, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3576 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2215 / 803–175]

Criterion Research Group LLC; Notice of Application

February 11, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: Criterion Research Group LLC.

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the Commission as an investment adviser.

FILING DATES: The application was filed on July 17, 2003, amended on October 24, 2003, and amended further on December 15, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 8, 2004 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Neil Baron, Chairman, Criterion Research Group LLC, 317 Madison Avenue, Suite 210, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Attorney, or Jennifer L. Sawin, Assistant Director, Division of Investment Management, Office of Investment Adviser Regulation, at (202) 942–0719.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware limited liability company with its principal place of business in New York, New York.

2. Applicant is offering an internet-based subscription service to institutional investors such as portfolio managers, pension plans, insurance companies and commercial bank trust departments. Applicant represents that it will not market, offer or provide its services to individuals. Applicant further represents that it will not provide its services to broker-dealers for distribution to brokerage customers or otherwise, including as contemplated by the Global Settlement Related to Analysts Conflicts of Interest,[1] unless Applicant first obtains an amended order from the Commission allowing it to do so.

3. Applicant's services consist of independent analysis regarding fixed income and equity securities and recommendations about the purchase

[1] The Global Settlement was entered into by ten large financial services firms with the Commission, the State of New York, the North American Securities Administrators Association, the NASD, the New York Stock Exchange, and other state securities regulators. The financial securities firms include: U.S. Bancorp Piper Jaffray, Inc.; Morgan Stanley & Co. Incorporated; Lehman Brother Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; J.P. Morgan Securities, Inc.; Goldman, Sachs & Co.; UBS Warburg LLC; Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.; Credit Suisse First Boston, LLC, f/k/a Credit Suisse First Boston Corporation, and Bear, Stearns & Co. Inc. The Global Settlement is comprised of ten Commission Final Judgments, ten Commission Litigation Releases, and is described in the Joint Press Release entitled "Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of Interest Between Research and Investment Banking," Press Release No. 2003–54 (Apr. 28, 2003) (*http://www.sec.gov/news/press/2003–54.htm*).

and sale of securities. Research and recommendations are distributed to clients through Applicant's Web site, which is updated 2 to 5 times per week. Applicant accepts questions and comments from clients. Applicant does not tailor its research, recommendations or responses to questions to its clients' individual risk preferences or investment needs.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of that Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), added new section 203A to the Advisers Act. Under section 203A(a)(1),[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an investment adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"). Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[3]

2. Applicant states that it does not qualify for registration as an investment adviser with the Commission. Applicant states that it does not have any assets under management; Applicant states that it does not actively manage any securities portfolios, either on a discretionary or a nondiscretionary basis, and does not provide "continuous and regular supervisory or management services" with respect to client accounts. Applicant also states that it does not serve as an investment adviser or subadviser to an investment company registered under the Investment Company Act. Applicant further states that it does not qualify for any exemption from the prohibition on registration with the Commission as provided in rule 203A–2 under the Advisers Act.

3. Applicant notes that section 203A(c) of the Advisers Act authorizes the Commission to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A]."[4]

4. Applicant argues that prohibiting it from registering as an investment adviser with the Commission would be inconsistent with the purposes of section 203A. Applicant submits that Congress intended section 203A to divide responsibility for regulating investment advisers between the Commission and the states. Applicant argues that Congress determined that the states should be responsible for regulating advisers "whose activities are likely to be concentrated in their home state," and that "larger advisers, with national businesses" should be regulated by the Commission and "be subject to national rules."[5] Applicant asserts that Congress chose the "assets under management" requirement as a rough guide for this division, on the theory that investment advisers with $25 million or more of assets under management are likely to be national investment advisers that should be regulated by the Commission, while investment advisers managing less than $25 million in assets are likely to be smaller advisers that should be subject to the local rules of the states.

5. Applicant submits that Congress recognized that the "assets under management" requirement does not precisely differentiate national investment advisers from local investment advisers, and that some national investment advisers may not qualify for registration with the Commission under the test formulated by Congress. Applicant states that Congress acknowledged that "the definition of 'assets under management' * * * may, in some cases, exclude firms with a national or multistate practice from being able to register with the Commission."[6] Applicant further states that Congress intended the Commission to use its exemptive authority under section 203A(c) to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement by permitting, "where appropriate, the registration of such firms with the Commission."[7]

6. Applicant argues that its activities affect the national securities markets and that it engages in a business of the type Congress contemplated when it provided the Commission with exemptive authority under section 203A(c). Applicant asserts that its services can be analogized to those of pension consultants because its services can affect large amounts of assets held throughout the United States. Applicant states that its activities, like those of pension consultants exempted by rule from the prohibition on registration with the Commission,[8] have an effect on billions of dollars of institutional investors in the national securities markets because it provides services exclusively to institutional clients across the country.

7. Applicant submits further that prohibiting it from registering with the Commission is inconsistent with the purposes of section 203A. Applicant argues that the states do not have a primary interest in regulating advisory services to institutional clients. Applicant notes that, in section 203A, Congress preserved the states' ability to regulate certain investment adviser representatives of advisers registered with the Commission. Applicant further notes that under the Commission's definition of investment adviser representative,[9] only personnel who work principally with individual, rather than institutional, clients are subject to state regulation. Applicant argues that this definition recognizes that, consistent with Congress' intent in the Coordination Act, the states' primary interest is in oversight of representatives who have an individual, not an institutional, clientele. Applicant submits that in fashioning this definition, the Commission noted its belief that distinguishing between retail and other clients was consistent with the intent of Congress as reflected in the Coordination Act.

8. Applicant argues that it is the type of investment adviser that Congress intended the Commission to consider exempting under section 203A(c). Applicant states that it provides services only to institutions and that it believes that its business will remain fully institutional. Applicant represents that it will not market, offer or provide its services to individual investors.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3536 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

[2] 15 U.S.C. 80b–3a(a)(1).

[3] 15 U.S.C. 80b–3a(a)(2).

[4] 15 U.S.C. 80b–3a(c).

[5] S. Rep. No. 104–293 (1996) at 4.

[6] *Id.*

[7] *Id.* at 5.

[8] *See* 17 CFR 275.203A–2(b).

[9] *See* 17 CFR 275.203A–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26352; File No. 812–21279]

The Merger Fund VL, et al.; Notice of Application

February 12, 2004.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for an exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

APPLICANTS: The Merger Fund VL ("Trust") and Westchester Capital Management, Inc. ("WCM").

SUMMARY OF APPLICATION: Applicants seek exemptive relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which WCM or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator ("Future Trusts") (the Trust, together with Future Trusts, are the "Trusts") (WCM and such affiliates, are referred to collectively or individually as "Westchester") to be sold to and held by: (i) separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as "Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans ("Qualified Plans") outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) Westchester and (v) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation § 1.817–5 ("General Accounts"), including the general account of any life insurance company, or certain related corporations, whose separate account holds, or will hold, shares of the Trusts.

FILING DATES: The application was filed on September 30, 2003, and amended on February 12, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 5, 2004, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, William H. Bohnett, Fulbright & Jaworski, LLP., 666 Fifth Avenue, New York, NY 10103.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Delaware statutory trust. WCM is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Trust. The Trust currently consists of one investment portfolio that is sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: The Merger Fund VL (the "Fund"). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (together with the Fund, "Funds").

2. Shares of the Funds will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a "Participating Insurance Company") to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under Section 3(c) of the 1940 Act (individually, a "Separate Account" and collectively, the "Separate Accounts"). Shares of the Funds may also be offered to Qualified Plans as well as to Westchester and to General Accounts whose separate account holds, or will hold, shares of the Trusts.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both State and Federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Funds. The role of the Trusts under this agreement, insofar as the Federal securities laws are applicable, will consist of, among other things, offering shares of the Trusts to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants seek exemptive relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts and shares of any Future Trusts to be sold to and held by: (i) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) Westchester; and (v) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

Rules 6e–2(b)(15) and 6e–3(T)(b)(15)

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust ("UIT") under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a),

15(a) and 15(b) of the 1940 Act.[1] Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding."

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, for themselves and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account). Additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as "extended mixed and shared funding."

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15)[2] are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Funds were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Funds' shares to Qualified Plans, to Westchester, or to General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Qualified Plans, Westchester or General Accounts. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Funds' shares were to be sold only to Qualified Plans, Westchester, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, Westchester, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of regulations by the Treasury Department that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts ("Regulations"). Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Authority Under Section 6(c)

9. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, the application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Funds, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts. Applicants assert that there is ample precedent, in a variety of

[1] The relief provided by Rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account.

[2] The exemptions are also granted to the investment adviser, principal underwriter and depositor of the separate account.

contexts, for granting exemptive relief not only to Applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future.

10. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Relief From Section 9(a)

11. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

12. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applicants assert that applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by separate accounts funding variable annuities, by separate accounts of other insurers or by Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

13. Moreover, according to Applicants, since the Qualified Plans, Westchester and General Accounts are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

Voting Conflicts

14. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3 (T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

15. Applicants contend that Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.[3] The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection.[4] The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer."[5] In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, according to Applicants, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

16. Applicants assert that the sale of Fund shares to Qualified Plans, Westchester and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with certain Qualified Plan assets to certain specified persons. Under Section 403(a) of the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the

[3] Investment Company Act Release No. 9482 (Oct. 18, 1976) (adopting Rule 6e–2 under the 1940 Act).

[4] Investment Company Release No. 8000 (Sept. 20, 1973) (proposing to amend Rule 3c–4, predecessor to Rule 6e–2, under the 1940 Act).

[5] Investment Company Act Release No. 9104 (Dec. 30, 1975) (proposing Rule 6e–2 under the 1940 Act). The Commission referred to the same rationale in granting an application for exemption. *See Equitable Variable Life Insurance Company*, Investment Company Act Release No. 8992 (Oct. 16, 1975) (order), Investment Company Act Release No. 8888 (Aug. 13, 1975) (notice).

terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

17. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, Westchester and General Accounts are not subject to any pass-through voting requirements. Applicants assert that, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is therefore not present with those Qualified Plans, Westchester or General Accounts.

18. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if Westchester were to serve in the capacity of trustee or named fiduciary with voting responsibilities, Westchester would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

19. In addition, even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

20. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. Applicants contend that the purchase of shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

21. According to Applicants, the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. Applicants state that the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

22. Applicants note that, for reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code") in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "– – adequately diversified." If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *" Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Fund, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Fund.

23. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. According to Applicants, the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

24. Applicants contend that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants assert that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants state that, in any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

25. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. According to Applicants, this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard

contract owner voting instructions only with respect to certain specified items. Applicants assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

26. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

27. Applicants state that each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. Applicants believe that there is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guaranteed under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, Applicants assert that the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

28. Applicants do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

29. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

30. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. § 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

31. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts and do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

32. Applicants claim there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds.

33. Applicants considered whether it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans, and determined it is possible to do so. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, Westchester and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Fund. Shares of a Fund that are held by Westchester and any General Account will be voted in the same proportion as all variable contract owners having

voting rights with respect to that Fund. However, Westchester and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

34. Applicants reviewed whether a "senior security," as such term is defined under Section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, Westchester or a General Account. Applicants concluded that the ability of the Trusts to sell shares of the Funds directly to Qualified Plans, Westchester or a General Account does not create a senior security. "Senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, Westchester, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

35. Applicants maintain that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants believe that use of a common investment medium such as a Fund for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Applicants also believe that mixed and shared funding should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants assert that Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. According to Applicants, mixed and shared funding, including the sale of shares of a Fund to Qualified Plans, also would permit a greater amount of assets available for investment by such Fund, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Funds more feasible.

36. Applicants submit that, regardless of the type of shareholder in a Fund, Westchester is or would be contractually and otherwise obligated to manage the Fund's investments solely and exclusively in accordance with that Fund's investment objectives and restrictions as well as with any guidelines established by the board of trustees or directors, as applicable, of the particular Trust. Applicants state that Westchester will work with the commingled pool of assets of each Fund and will not take into account the identity of the shareholders.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions, which will also apply to Future Trusts:

1. A majority of the Board of Trustees (the "Board") of the Trust will consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Trustee or Trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (e) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Fund), Westchester, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, "Participants") will report any potential or existing conflicts to the Board. The Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these

responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment vehicle including another Fund or, in the case of Participating Insurance Company Participants, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, Westchester or an affiliate of Westchester, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, each of such Participants, where applicable, will vote shares of the applicable Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributable to it, in the same proportion as it votes those shares for which it has received voting instructions, and such obligations shall be a contractual obligation of all Participating Insurance Companies. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, Westchester will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that Westchester shall vote its shares in such other manner as may be required by the Commission or its staff. Such voting obligation shall be a contractual obligation of Westchester.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the

Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of a Fund unless such Qualified Plan executes an agreement with the Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

Conclusion

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–3537 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26351; File No. 812–13028]

Russell Investment Funds, et al.; Notice of Application

February 11, 2004.

AGENCY: The Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for an exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2y(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: Russell Investment Funds (the "Trust") and Frank Russell Investment Management Company (together with any successor, "FRIMCo") (collectively, the "Applicants").

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which FRIMCo or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator ("Future Trusts") (the Trust, together with Future Trusts, are the "Trusts") to be sold to and held by: (i) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as "Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans ("Qualified Plans") outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) FRIMCo or certain related corporations (collectively "FRIMCo"); and (v) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

Filing Dates: The application was filed on October 10, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 2004, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Dechert LLP, 200 Clarendon Street, 27th Floor, Boston, MA 02116, Attention: John V. O'Hanlon, Esq.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Massachusetts business trust. FRIMCo is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Trust. The Trust currently consists of, and offers shares of beneficial interest ("shares") representing interests in, five separate investment portfolios: Multi-Style Equity Fund, Aggressive Equity Fund, Non-U.S. Fund, Real Estate Securities Fund, and Core Bond Fund (each, a "Portfolio," and collectively, the "Portfolios"). The Trust or any Future

Trusts may offer one or more additional investment portfolios in the future (also referred to as "Portfolios").

2. Pursuant to an exemptive order previously granted by the Commission (Russell Insurance Fund, Inc., Release No. IC–16206 (Jan. 7, 1988)), shares of the Portfolios are held by separate accounts of affiliated and unaffiliated insurance companies (each, a "Participating Insurance Company") as investment vehicles to fund Variable Contracts. These separate accounts are either registered as investment companies under the 1940 Act or are exempt from such registration (individually, a "Separate Account" and collectively, the "Separate Accounts"). Applicants propose that the Trust also be permitted to offer and/or sell shares representing interests in the Portfolios to Qualified Plans outside of the separate account context, FRIMCo or certain related corporations (collectively "FRIMCo"), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations. Applicants propose that this new "extended mixed and shared funding" exemptive order supersede the exemptive order previously granted by the Commission that is cited above.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have established or will establish their own Separate Accounts and have designed or will design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has entered or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Portfolios. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Portfolios to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants seek an order to the extent necessary to permit shares of the Portfolios and shares of any Future Trusts to be sold to and held by: (i) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) FRIMCo or certain related corporations (collectively "FRIMCo"); and (v) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust ("UIT") under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding."

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as "extended mixed and shared funding."

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares as described

above. Applicants note that if shares of the Portfolios were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans, to FRIMCo, or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Qualified Plans, FRIMCo, or General Accounts. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Portfolios' shares were to be sold only to Qualified Plans, FRIMCo, or General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, FRIMCo, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the regulations issued by the Treasury Department ("Regulations") that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, the application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Portfolios, and to the extent necessary, investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, FRIMCo, and General Accounts are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. The sale of Portfolio shares to Qualified Plans, FRIMCo, and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act, as amended ("ERISA"), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (i) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (ii) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, FRIMCo and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, FRIMCo, or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if FRIMCo or an affiliate of FRIMCo were to serve in the capacity of trustee or named fiduciary with voting responsibilities, FRIMCo or its affiliate would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code") in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified". If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts. * * *" Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Portfolio, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Portfolio.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's

decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Portfolio.

26. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Portfolio.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, FRIMCo, and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Trusts concerning participation in the relevant Portfolio. Shares of a Portfolio that are held by FRIMCo and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Portfolio. However, FRIMCo and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Portfolio would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the

affected Trust, to withdraw its investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

32. Applicants reviewed whether a "senior security," as such term is defined under Section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, FRIMCo, or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Portfolios directly to Qualified Plans, FRIMCo, or a General Account does not on ate a senior security. "Senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, FRIMCo, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Portfolio. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions, which shall apply to the Trust as well as any Future Trust that relies on the order:

1. A majority of the Board of Trustees (the "Board") of the Trust will consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of such Trust are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Portfolio), FRIMCo, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment vehicle including another Portfolio, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Trust, to withdraw its investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust or FRIMCo, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (i) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (ii) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, FRIMCo and any General Account will vote their respective shares of any Portfolio in the same proportion of all variable contract owners having voting rights with respect to that Portfolio; provided; however, that FRIMCo or any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (i) shares of the Trust may be offered to Separate Accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans; (ii) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (iii) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3538 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27802]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 12, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 8, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 8, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Metropolitan Edison Company (70–10192)

Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), each at 76 South Main Street, Akron, Ohio, 44308, and direct wholly-owned public-utility subsidiaries of FirstEnergy Corp. ("FirstEnergy"), a registered holding company, and Pennsylvania Power Company ("Penn Power"), 76 South Main Street, Akron, Ohio, 44308, an indirect wholly-owned public-utility subsidiary of FirstEnergy, have each filed an application/declaration under sections 6(a), 7, 9(a)(1), 10, and 12(b) of the Public Utility Holding Company Act of 1935, as amended ("Act") and rules 43, 45, 46 and 54 under the Act. Met-Ed, Penelec and Penn Power are referred to individually as an "Applicant," and collectively as the "Applicants."

The Applicants seek authority to form and acquire all of the membership interests in separate Delaware limited liability companies (each an "SPE" and collectively "SPEs") to which Met-Ed, Penelec and Penn Power will sell their respective customer accounts receivables ("Receivables"). Each of the SPEs will be organized under Delaware law as a single-member limited liability company. Each SPE will have nominal capital (except as described below) and will conduct no business operations or own any assets other than the Receivables purchased from, or contributed by, its parent. The purpose in forming the SPEs is to isolate the Receivables from the Applicants who have originated them, so that under the Financial Accounting Standards Board Statement No. 140 ("FASB 140"),[1] the sale of the Receivables to the SPEs qualifies for treatment as a true sale of assets by the Applicants rather than as a loan secured by the Receivables. This will allow the Receivables to be removed as assets from the books of the Applicants. The Applicants will not have any obligation to repurchase Receivables that they have sold.

Each Applicant will enter into a substantially identical Receivables Sale Agreement ("RSA") with its respective SPE. Each SPE, in turn, will enter into a Receivables Purchase Agreement ("RPA") under which the SPE will fund its purchase of Receivables by selling, on a revolving basis, undivided ownership interests in the pool of Receivables that it owns to a conduit established to issue and sell commercial paper ("Conduit") and/or one or more financial institutions (collectively, "Purchasers") through Bank One, NA, acting as agent ("Agent"). The maximum purchase commitment of the Purchasers under the RPAs are $80 million in the case of Met-Ed, $75 million in the case of Penelec, and $25 million in the case of Penn Power.

Under each RSA, an Applicant will sell and assign to its respective SPE all of its right, title and interest to its Receivables (together with any security that may have been obtained from customers and collections by the Applicant on the Receivables). The Receivables will be sold to the SPE without recourse (except as described below), at a discount using a discount rate to be determined from time to time based on, among other factors, the SPE's cost of funds (as described below), which takes into account the Applicant's credit rating, and the risk of non-payment by the obligors on the Receivables (*i.e.*, the Applicant's loss experience on its accounts receivable).

Although Receivables will be sold by each Applicant to its respective SPE without recourse, the SPE will be entitled to a credit equal to any reduction in the amount of any Receivables resulting from (1) any defective or rejected goods or services, any discount or any adjustment or otherwise in the amount of any Receivable, or (2) any setoff in respect of any claim affecting the Receivables. In addition, if any of the representations or warranties made by the Applicant in the RSA are no longer true with respect to any Receivable, the SPE will be entitled to a credit against the purchase price for the Recievable in an amount equal to its outstanding balance. Each Applicant has the right to terminate the RSA upon giving 15 business days written notice to the SPE.

Each SPE will finance the purchase of the Receivables, first, using the funds obtained from Purchasers under the related RPA (as described below), second, by delivery of the proceeds of a subordinated revolving loan by the SPE's parent (a "Subordinated Loan"), and third, by accepting a contribution of Receivables to its capital from its parent in an amount equal to the remaining balance of the purchase price for the Receivables. The note evidencing the Subordianted Loan will bear interest at a prime rate, which is equal to the higher of (1) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (2) the federal funds effective rate plus .50%.

The amount of Receivables originated by an Applicant will vary from month to month based on electricity usage by its customers. As a result of this and other factors, the funds available to an SPE to purchase Receivables may not match the cost of Receivables available for sale. The use of the Subordinated Loan/capital contribution mechanism is intended to address this periodic mismatch. When the amount of Receivables available for sale by an Applicant exceeds the amount of cash its SPE has available, the excess will be

[1] *See* FASB Statement No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," a replacement of FASB Statement No. 125 (September 2000). FASB 140 sets forth various tests that have to be met in order for the transferred assets to be deemed to be isolated from (*i.e.*, out of the control of) the seller. Special-purpose entities similar to those the Applicants propose to form are typically used to establish separateness.

purchased by the SPE with the proceeds of a Subordinated Loan and/or by accepting a capital contribution of Receivables. Conversely, if, after payments of all amounts due under the RPA an SPE develops a cash surplus due to collections of previously purchased Receivables (or Receivables received as a contribution) exceeding the balance of newly created Receivables available for purchase, the surplus funds will be used to repay the Subordinated Loan and/or make a cash distribution. Through this mechanism, it is expected that the SPEs will not retain substantial cash balances at any time and that substantially all cash realized from the collection of the Receivables (net of the costs of the program) will be made available to the Applicants.

Under each RPA, the SPE is obligated to pay: (1) The Agent various fees (including fees paid to the Agent and the Conduit under a fee letter); (2) fees and costs to each Applicant for the service provided in billing and collecting on the Receivables the Applicant sold to the SPE (described further below); (3) amounts required to reduce the interests in the Receivables purchased by the Purchasers, (4) amounts required if the representations and warranties regarding the Receivables are no longer true; (5) broken funding costs (*e.g.*, damages incurred to prepay any LIBOR borrowings); (6) default fees; and (7) amounts payable as yield ("Yield") on the capital at any time associated with the undivided interest in purchased Receivables. The Yield for any interest accrual period that will be applied to capital provided by financial institutions that are Purchasers shall be an amount equal to the product of the applicable bank rate (either (1) the London Interbank Offered Rate (LIBOR), plus a spread, or (2) a prime rate, which is the higher of (a) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (b) the federal funds effective rate plus .50%), multiplied by the capital invested. The Yield for each month that will be applied to capital provided by the Conduit shall be an amount based on the effective cost of funds on promissory notes issued by the Conduit in the commercial paper market.

Each Applicant is designated as the servicer under the RPA to which it is a party. Thus, the transactions described above will have no effect on the services each Applicant provides to its customers. Among other things, each Applicant will continue to bill and collect all of its utility service accounts receivable in accordance with its current credit and collection policies. As compensation for the services it renders, each Applicant (as servicer) will be paid a monthly servicing fee equal to .25% of the aggregate outstanding balance of all Receivables during the month. Upon the occurrence of certain events, including, among others, a failure by an SPE to pay indebtedness or other fees when due or to perform or observe certain covenants under the RPA, an event of insolvency affecting an SPE or an Applicant, or the failure by an Applicant to maintain certain debt coverage and capitalization ratios, the Agent would have the right to designate a new servicer.

The proposed transaction will provide the Applicants with an additional source of funds, and will save Met-Ed and Penelec approximately 50–125 basis points over the cost of conventional financing and Penn Power approximately 40–115 basis points over the cost of conventional financing. Based on present market conditions, the Applicants estimate that the current cost of the funds available under the Receivables program is 1.545% in the case of Met-Ed and Penelec and 1.645% in the case of Penn Power, as compared to the estimated costs to the Applicants of bank financing (2.75%) and a one-year floating rate note (approximately 2%).

Proceeds of the Receivables sale program will be used by the Applicants for general corporate purposes.

Pennsylvania Electric Company (70–10193)

Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), each at 76 South Main Street, Akron, Ohio, 44308, and direct wholly-owned public-utility subsidiaries of FirstEnergy Corp. ("FirstEnergy"), a registered holding company, and Pennsylvania Power Company ("Penn Power"), 76 South Main Street, Akron, Ohio, 44308, an indirect wholly-owned public-utility subsidiary of FirstEnergy, have each filed an application/declaration under sections 6(a), 7, 9(a)(1), 10, and 12(b) of the Public Utility Holding Company Act of 1935, as amended ("Act") and rules 43, 45, 46 and 54 under the Act. Met-Ed, Penelec and Penn Power are referred to individually as an "Applicant," and collectively as the "Applicants."

The Applicants seek authority to form and acquire all of the membership interests in separate Delaware limited liability companies (each an "SPE" and collectively "SPEs") to which Met-Ed, Penelec and Penn Power will sell their respective customer accounts receivables ("Receivables"). Each of the SPEs will be organized under Delaware law as a single-member limited liability company. Each SPE will have nominal capital (except as described below) and will conduct no business operations or own any assets other than the Receivables purchased from, or contributed by, its parent. The purpose in forming the SPEs is to isolate the Receivables from the Applicants who have originated them, so that under the Financial Accounting Standards Board Statement No. 140 ("FASB 140"),[2] the sale of the Receivables to the SPEs qualifies for treatment as a true sale of assets by the Applicants rather than as a loan secured by the Receivables. This will allow the Receivables to be removed as assets from the books of the Applicants. The Applicants will not have any obligation to repurchase Receivables that they have sold.

Each Applicant will enter into a substantially identical Receivables Sale Agreement ("RSA") with its respective SPE. Each SPE, in turn, will enter into a Receivables Purchase Agreement ("RPA") under which the SPE will fund its purchase of Receivables by selling, on a revolving basis, undivided ownership interests in the pool of Receivables that it owns to a conduit established to issue and sell commercial paper ("Conduit") and/or one or more financial institutions (collectively, "Purchasers") through Bank One, NA, acting as agent ("Agent"). The maximum purchase commitment of the Purchasers under the RPAs are $80 million in the case of Met-Ed, $75 million in the case of Penelec, and $25 million in the case of Penn Power.

Under each RSA, an Applicant will sell and assign to its respective SPE all of its right, title and interest to its Receivables (together with any security that may have been obtained from customers and collections by the Applicant on the Receivables). The Receivables will be sold to the SPE without recourse (except as described below), at a discount using a discount rate to be determined from time to time based on, among other factors, the SPE's cost of funds (as described below), which takes into account the Applicant's credit rating, and the risk of non-payment by the obligors on the

[2] *See* FASB Statement No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," a replacement of FASB Statement No. 125 (September 2000). FASB 140 sets forth various tests that have to be met in order for the transferred assets to be deemed to be isolated from (*i.e.*, out of the control of) the seller. Special-purpose entities similar to those the Applicants propose to form are typically used to establish separateness.

Receivables (*i.e.*, the Applicant's loss experience on its accounts receivable).

Although Receivables will be sold by each Applicant to its respective SPE without recourse, the SPE will be entitled to a credit equal to any reduction in the amount of any Receivables resulting from (1) any defective or rejected goods or services, any discount or any adjustment or otherwise in the amount of any Receivable, or (2) any setoff in respect of any claim affecting the Receivables. In addition, if any of the representations or warranties made by the Applicant in the RSA are no longer true with respect to any Receivable, the SPE will be entitled to a credit against the purchase price for the Recievable in an amount equal to its outstanding balance. Each Applicant has the right to terminate the RSA upon giving 15 business days written notice to the SPE.

Each SPE will finance the purchase of the Receivables, first, using the funds obtained from Purchasers under the related RPA (as described below), second, by delivery of the proceeds of a subordinated revolving loan by the SPE's parent (a "Subordinated Loan"), and third, by accepting a contribution of Receivables to its capital from its parent in an amount equal to the remaining balance of the purchase price for the Receivables. The note evidencing the Subordianted Loan will bear interest at a prime rate, which is equal to the higher of (1) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (2) the federal funds effective rate plus .50%.

The amount of Receivables originated by an Applicant will vary from month to month based on electricity usage by its customers. As a result of this and other factors, the funds available to an SPE to purchase Receivables may not match the cost of Receivables available for sale. The use of the Subordinated Loan/capital contribution mechanism is intended to address this periodic mismatch. When the amount of Receivables available for sale by an Applicant exceeds the amount of cash its SPE has available, the excess will be purchased by the SPE with the proceeds of a Subordinated Loan and/or by accepting a capital contribution of Receivables. Conversely, if, after payments of all amounts due under the RPA an SPE develops a cash surplus due to collections of previously purchased Receivables (or Receivables received as a contribution) exceeding the balance of newly created Receivables available for purchase, the surplus funds will be used to repay the Subordinated Loan and/or make a cash distribution. Through this mechanism, it is expected that the SPEs will not retain substantial cash balances at any time and that substantially all cash realized from the collection of the Receivables (net of the costs of the program) will be made available to the Applicants.

Under each RPA, the SPE is obligated to pay: (1) The Agent various fees (including fees paid to the Agent and the Conduit under a fee letter); (2) fees and costs to each Applicant for the service provided in billing and collecting on the Receivables the Applicant sold to the SPE (described further below); (3) amounts required to reduce the interests in the Receivables purchased by the Purchasers, (4) amounts required if the representations and warranties regarding the Receivables are no longer true; (5) broken funding costs (*e.g.*, damages incurred to prepay any LIBOR borrowings); (6) default fees; and (7) amounts payable as yield ("Yield") on the capital at any time associated with the undivided interest in purchased Receivables. The Yield for any interest accrual period that will be applied to capital provided by financial institutions that are Purchasers shall be an amount equal to the product of the applicable bank rate (either (1) the London Interbank Offered Rate (LIBOR), plus a spread, or (2) a prime rate, which is the higher of (a) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (b) the federal funds effective rate plus .50%), multiplied by the capital invested. The Yield for each month that will be applied to capital provided by the Conduit shall be an amount based on the effective cost of funds on promissory notes issued by the Conduit in the commercial paper market.

Each Applicant is designated as the servicer under the RPA to which it is a party. Thus, the transactions described above will have no effect on the services each Applicant provides to its customers. Among other things, each Applicant will continue to bill and collect all of its utility service accounts receivable in accordance with its current credit and collection policies. As compensation for the services it renders, each Applicant (as servicer) will be paid a monthly servicing fee equal to .25% of the aggregate outstanding balance of all Receivables during the month. Upon the occurrence of certain events, including, among others, a failure by an SPE to pay indebtedness or other fees when due or to perform or observe certain covenants under the RPA, an event of insolvency affecting an SPE or an Applicant, or the failure by an Applicant to maintain certain debt coverage and capitalization ratios, the Agent would have the right to designate a new servicer.

The proposed transaction will provide the Applicants with an additional source of funds, and will save Met-Ed and Penelec approximately 50–125 basis points over the cost of conventional financing and Penn Power approximately 40–115 basis points over the cost of conventional financing. Based on present market conditions, the Applicants estimate that the current cost of the funds available under the Receivables program is 1.545% in the case of Met-Ed and Penelec and 1.645% in the case of Penn Power, as compared to the estimated costs to the Applicants of bank financing (2.75%) and a one-year floating rate note (approximately 2%).

Proceeds of the Receivables sale program will be used by the Applicants for general corporate purposes.

Pennsylvania Power Company (70–10194)

Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), each at 76 South Main Street, Akron, Ohio, 44308, and direct wholly-owned public-utility subsidiaries of FirstEnergy Corp. ("FirstEnergy"), a registered holding company, and Pennsylvania Power Company ("Penn Power"), 76 South Main Street, Akron, Ohio, 44308, an indirect wholly-owned public-utility subsidiary of FirstEnergy, have each filed an application/declaration under sections 6(a), 7, 9(a)(1), 10, and 12(b) of the Public Utility Holding Company Act of 1935, as amended ("Act") and rules 43, 45, 46 and 54 under the Act. Met-Ed, Penelec and Penn Power are referred to individually as an "Applicant," and collectively as the "Applicants."

The Applicants seek authority to form and acquire all of the membership interests in separate Delaware limited liability companies (each an "SPE" and collectively "SPEs") to which Met-Ed, Penelec and Penn Power will sell their respective customer accounts receivables ("Receivables"). Each of the SPEs will be organized under Delaware law as a single-member limited liability company. Each SPE will have nominal capital (except as described below) and will conduct no business operations or own any assets other than the Receivables purchased from, or contributed by, its parent. The purpose in forming the SPEs is to isolate the Receivables from the Applicants who have originated them, so that under the Financial Accounting Standards Board

Statement No. 140 ("FASB 140"),[3] the sale of the Receivables to the SPEs qualifies for treatment as a true sale of assets by the Applicants rather than as a loan secured by the Receivables. This will allow the Receivables to be removed as assets from the books of the Applicants. The Applicants will not have any obligation to repurchase Receivables that they have sold.

Each Applicant will enter into a substantially identical Receivables Sale Agreement ("RSA") with its respective SPE. Each SPE, in turn, will enter into a Receivables Purchase Agreement ("RPA") under which the SPE will fund its purchase of Receivables by selling, on a revolving basis, undivided ownership interests in the pool of Receivables that it owns to a conduit established to issue and sell commercial paper ("Conduit") and/or one or more financial institutions (collectively, "Purchasers") through Bank One, NA, acting as agent ("Agent"). The maximum purchase commitment of the Purchasers under the RPAs are $80 million in the case of Met-Ed, $75 million in the case of Penelec, and $25 million in the case of Penn Power.

Under each RSA, an Applicant will sell and assign to its respective SPE all of its right, title and interest to its Receivables (together with any security that may have been obtained from customers and collections by the Applicant on the Receivables). The Receivables will be sold to the SPE without recourse (except as described below), at a discount using a discount rate to be determined from time to time based on, among other factors, the SPE's cost of funds (as described below), which takes into account the Applicant's credit rating, and the risk of non-payment by the obligors on the Receivables (*i.e.*, the Applicant's loss experience on its accounts receivable).

Although Receivables will be sold by each Applicant to its respective SPE without recourse, the SPE will be entitled to a credit equal to any reduction in the amount of any Receivables resulting from (1) any defective or rejected goods or services, any discount or any adjustment or otherwise in the amount of any Receivable, or (2) any setoff in respect of any claim affecting the Receivables. In addition, if any of the representations or warranties made by the Applicant in the RSA are no longer true with respect to any Receivable, the SPE will be entitled to a credit against the purchase price for the Recievable in an amount equal to its outstanding balance. Each Applicant has the right to terminate the RSA upon giving 15 business days written notice to the SPE.

Each SPE will finance the purchase of the Receivables, first, using the funds obtained from Purchasers under the related RPA (as described below), second, by delivery of the proceeds of a subordinated revolving loan by the SPE's parent (a "Subordinated Loan"), and third, by accepting a contribution of Receivables to its capital from its parent in an amount equal to the remaining balance of the purchase price for the Receivables. The note evidencing the Subordianted Loan will bear interest at a prime rate, which is equal to the higher of (1) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (2) the federal funds effective rate plus .50%.

The amount of Receivables originated by an Applicant will vary from month to month based on electricity usage by its customers. As a result of this and other factors, the funds available to an SPE to purchase Receivables may not match the cost of Receivables available for sale. The use of the Subordinated Loan/capital contribution mechanism is intended to address this periodic mismatch. When the amount of Receivables available for sale by an Applicant exceeds the amount of cash its SPE has available, the excess will be purchased by the SPE with the proceeds of a Subordinated Loan and/or by accepting a capital contribution of Receivables. Conversely, if, after payments of all amounts due under the RPA an SPE develops a cash surplus due to collections of previously purchased Receivables (or Receivables received as a contribution) exceeding the balance of newly created Receivables available for purchase, the surplus funds will be used to repay the Subordinated Loan and/or make a cash distribution. Through this mechanism, it is expected that the SPEs will not retain substantial cash balances at any time and that substantially all cash realized from the collection of the Receivables (net of the costs of the program) will be made available to the Applicants.

Under each RPA, the SPE is obligated to pay: (1) The Agent various fees (including fees paid to the Agent and the Conduit under a fee letter); (2) fees and costs to each Applicant for the service provided in billing and collecting on the Receivables the Applicant sold to the SPE (described further below); (3) amounts required to reduce the interests in the Receivables purchased by the Purchasers, (4) amounts required if the representations and warranties regarding the Receivables are no longer true; (5) broken funding costs (*e.g.*, damages incurred to prepay any LIBOR borrowings); (6) default fees; and (7) amounts payable as yield ("Yield") on the capital at any time associated with the undivided interest in purchased Receivables. The Yield for any interest accrual period that will be applied to capital provided by financial institutions that are Purchasers shall be an amount equal to the product of the applicable bank rate (either (1) the London Interbank Offered Rate (LIBOR), plus a spread, or (2) a prime rate, which is the higher of (a) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (b) the federal funds effective rate plus .50%), multiplied by the capital invested. The Yield for each month that will be applied to capital provided by the Conduit shall be an amount based on the effective cost of funds on promissory notes issued by the Conduit in the commercial paper market.

Each Applicant is designated as the servicer under the RPA to which it is a party. Thus, the transactions described above will have no effect on the services each Applicant provides to its customers. Among other things, each Applicant will continue to bill and collect all of its utility service accounts receivable in accordance with its current credit and collection policies. As compensation for the services it renders, each Applicant (as servicer) will be paid a monthly servicing fee equal to .25% of the aggregate outstanding balance of all Receivables during the month. Upon the occurrence of certain events, including, among others, a failure by an SPE to pay indebtedness or other fees when due or to perform or observe certain covenants under the RPA, an event of insolvency affecting an SPE or an Applicant, or the failure by an Applicant to maintain certain debt coverage and capitalization ratios, the Agent would have the right to designate a new servicer.

The proposed transaction will provide the Applicants with an additional source of funds, and will save Met-Ed and Penelec approximately 50–125 basis points over the cost of conventional financing and Penn Power approximately 40–115 basis points over the cost of conventional financing. Based on present market conditions, the

[3] *See* FASB Statement No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," a replacement of FASB Statement No. 125 (September 2000). FASB 140 sets forth various tests that have to be met in order for the transferred assets to be deemed to be isolated from (*i.e.*, out of the control of) the seller. Special-purpose entities similar to those the Applicants propose to form are typically used to establish separateness.

Applicants estimate that the current cost of the funds available under the Receivables program is 1.545% in the case of Met-Ed and Penelec and 1.645% in the case of Penn Power, as compared to the estimated costs to the Applicants of bank financing (2.75%) and a one-year floating rate note (approximately 2%).

Proceeds of the Receivables sale program will be used by the Applicants for general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3577 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49217; File No. SR–Amex–2004–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Application of a Fee Cap for Member Firm Options Transactions

February 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt an options fee cap of $75,000 per month in connection with "firm" trades of member organizations for all equity and index options transaction charges, options comparison charges, and options floor brokerage charges.

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt an options fee cap, exclusive of any options licensing fee, of $75,000 per month in connection with "firm" trades of member organizations on all equity and index options transaction charges, options comparison charges, and options floor brokerage charges. The "firm" designation identifies a clearing member's account that handles only transactions cleared and positions carried on behalf of non-customers that are not specialists, registered options traders or away market makers. Under this proposal, firm-related charges for equity and index options, in the aggregate for one month, would not exceed $75,000 per month per member firm.

The Amex believes that member firms that are substantial order flow providers should be rewarded through the proposed fee cap. The Exchange believes that this proposal provides an incentive for member firms to attract and transact more volume on the floor of the Exchange. In addition, an increase in firm orders should also provide more trading opportunities for floor members, thereby increasing revenue potential to the membership and the Exchange.

2. Statutory Basis

The Exchange believes the proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b)(4) of the Act,[5] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2004–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2004–10 and should be submitted by March 11, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3543 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49214; File No. SR–Amex–2003–101]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to Amex Membership's Duty To Report Fraudulent or Manipulative Conduct

February 9, 2004.

On November 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to amend Rule 3 of the Amex's *General and Floor Rules* to require Amex members or member organizations to report to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the Floor.[3]

The proposed rule change was published for comment in the **Federal Register** on January 6, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposal is consistent with section 6(b)(1) of the Act,[8] which requires that the Exchange have the capacity to enforce its members' compliance with the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission believes that by requiring Amex members or member organizations to immediately report fraudulent or manipulative conduct in connection with the trading of securities on the Exchange floor to the Exchange, the proposal should enhance the Exchange's ability to prevent and sanction fraud and manipulation and to enforce its members' compliance with the Federal securities laws and with the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2003–101) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3579 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49213; File No. SR–CBOE–2003–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1, 2, and 3 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Its Position and Exercise Limits

February 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. On September 29, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change. On January 29, 2004, the CBOE submitted Amendment No. 2 to the proposed rule change. On February 9, 2004, the CBOE submitted Amendment No. 3 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to issue a regulatory circular that contains additional guidance for member firms seeking non-aggregation treatment for the accounts of certain trading units of the member for purposes of the Exchange's position and exercise limit rules.

The text of the proposed regulatory circular is below. Proposed additions are in *italics.*

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Regulatory Circular RG04–XX[3]
Date: 2004
To: Members and Member Firms
From: Regulatory Services Division
Re: Aggregation of Accounts for Position and Exercise Limit Purposes

Aggregation of Accounts

The purpose of this memorandum is to summarize the provisions of Exchange rules with respect to the aggregation of accounts for position and exercise limit purposes. Exchange Rules 4.11 and 4:12 require that positions maintained in accounts directly or indirectly controlled by the same individual or entity be aggregated for position and exercise limit purposes. Pursuant to Rule 4.11, control exists when an individual or entity makes investment decisions for an account or accounts, or materially influences directly or indirectly the actions of any person who makes investment decisions. Control is also presumed in the following circumstances: (a) among all participants of a joint account who have authority to act on behalf of the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change also changes the title of Rule 3 from "Excessive Dealings" to "General Prohibitions and Duty to Report."

[4] *See* Securities Exchange Act Release No. 48998 (December 29, 2003), 69 FR 708.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *This regulatory circular was filed with the SEC in connection with SR–CBOE–2003–35.*

account; (b) among all general partners to a partnership account; (c) when an individual or entity holds an ownership interest of 10% or more in an entity, or shares in 10% or more of profits and/or losses of an account; (d) when accounts have common directors or management; and (e) where an individual or entity has authority to execute transactions in an account.

Non-aggregation of Accounts

Demonstrating that control does not exist can rebut the presumption of control. The rebuttal proof must be submitted to the Exchange by affidavit and other documentation as may be appropriate. The decision to grant non-aggregation is not retroactive and is handled on a case-by-case basis. The Exchange has granted non-aggregation between the following accounts: between a market-maker's individual account and his joint account in which the market-maker's participation in the joint account is limited to providing financial backing to the other member of the account; and between affiliated broker-dealers.

In situations involving requests for non-aggregation treatment between (i) affiliated broker-dealers and (ii) separate and distinct trading units within the same broker-dealer, the Exchange requires, at a minimum, the broker-dealer(s) to satisfy the following conditions:

(i) *Establish that the trading unit(s) requesting non-aggregation operates independently of other trading units of the broker-dealer, which must include the disclosure of the trading unit's trading objective;*

(ii) *Create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the broker-dealer that also have trading accounts;*[4]

(iii) *Maintain all trading activity of the trading unit(s) requesting non-aggregation in a segregated account, which shall be reported to the Exchange as such; and*

(iv) *Maintain regulatory compliance oversight and internal controls and procedures.*

If the Exchange determines that the broker-dealer that requests non-aggregation treatment has successfully rebutted the presumption of control and grants non-aggregation status, the broker-dealer must, at a minimum, comply with the following requirements:

(i) *Retain written records of information concerning the non-aggregated account, including, but not limited to, trading personnel, names of personnel making trading decisions, unusual trading activities, disciplinary action resulting from a breach of the broker-dealer's systems firewalls and information-sharing policies, and the transfer of securities between the broker-dealer's non-aggregated accounts, which information shall be promptly made available to the Exchange upon its request;*

(ii) *Promptly provide to the Exchange a written report at such time there is any material change with respect to the non-aggregated account, at which point the Exchange will reexamine the bases for its determination of non-aggregation;*[5] *and*

(iii) *Provide an acknowledgement to the effect that the Exchange reserves the right to impose additional restrictions and conditions with respect to the granting and removal of non-aggregation as the circumstances warrant.*

This memorandum is not intended to be a comprehensive description of all of the rules and requirements relating to the aggregation of accounts for position and exercise limit purposes. For a more detailed description of these rules and requirements members are advised to refer to Exchange Rule 4.11 and the Interpretations and Policies thereunder. Questions pertaining to this memorandum may be directed to Pat Cerny at (312) 786–7722 or Mike Felty at (312) 786–7504.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to issue a regulatory circular that provides additional guidance with respect to the proof required to rebut the presumption of control for purposes of the Exchange's option contract position limit and option contract exercise limit rules (CBOE Rules 4.11 and 4.12, respectively). The regulatory circular would set forth conditions and requirements, in addition to those that are set forth in Interpretation .03(c) to CBOE Rule 4.11, that must be satisfied by a member who seeks non-aggregation of the accounts of certain of its trading units, for purposes of CBOE Rules 4.11 and 4.12.

The Exchange recently has received requests from member firms asking for non-aggregation treatment for separate trading accounts of those member firms with respect to the Exchange's position and exercise limits. Specifically, these member firms have requested that one or more of their internal trading units be treated as a separate aggregation unit distinct from other units of the member firm holding proprietary option positions for purposes of determining aggregate position and exercise limits in an option contract. These firms have indicated that common control does not exist with respect to certain trading units of the member firm, which would permit the trading units to be treated as separate aggregation units for purposes of CBOE Rules 4.11 and 4.12.

CBOE Rule 4.11 prohibits a member, for any account in which it has an interest or for the account of any customer, from effecting an opening transaction in an option contract if the member or its customer controls an aggregate position in that option class that exceeds a certain level.[6] CBOE Rule 4.12 prohibits a member, for any account in which it has an interest or for the account of any customer, from exercising a long position in an option contract if the member or its customer exercises within any five consecutive business days aggregate long positions in that option class that exceed a certain

[4] *The Exchange will review this category on a case-by-case basis. With respect to physical separation, the presumption of control becomes easier to rebut as the physical separation between the trading units increases. At the minimum, the Exchange will require trading units located on the same floor to be physically isolated from each other to the extent that the Exchange is assured that no communication will take place between individuals staffed in the applicable trading units. In addition, the Exchange will require system firewalls to be in place in order to prevent the flow of information (e.g., trades, positions, trading strategies) between the trading unit(s) that receives non-aggregation treatment and other trading units controlled by the broker-dealer.*

[5] *The Exchange reserves the right to freeze any position above the standard aggregation limit if the Exchange determines that aggregation is then appropriate due to changed circumstances.*

[6] *See* Interpretation .02 to CBOE Rule 4.11, which delineates position limits for option contracts.

level.[7] Pursuant to Interpretation .03(a) to CBOE Rule 4.11, control exists for purposes of CBOE Rules 4.11 and 4.12 when it is determined that an individual or entity (1) makes investment decisions for an account or accounts, or (2) materially influences directly or indirectly the actions of any person who makes investment decisions. Interpretation .03(b) to CBOE Rule 4.11 provides certain circumstances in which control will be presumed to exist.[8] Interpretation .03(c) to CBOE Rule 4.11 explains how a member firm may rebut the presumption of control.[9]

The Exchange believes that Interpretation .03 to CBOE Rule 4.11 provides the Exchange with the authority to grant non-aggregation requests of the type described above because the limits set forth in CBOE Rules 4.11 and 4.12 are generally based on control, as opposed to ownership, of accounts.[10] Therefore, if two accounts of a broker-dealer are individually managed by separate trading units that have no relationship to the other except that each operates within a single corporate entity, the Exchange believes that the broker-dealer would have a basis to show that the accounts are not under common control. In fact, the Exchange has already permitted non-aggregation of accounts of affiliated entities of a member firm for purposes of CBOE Rules 4.11 and 4.12 and does not believe the existence of a separate corporate entity, affiliated or otherwise, into which a trading unit and its corresponding account are placed should be the determinative factor with respect to rebutting the presumption of control. Instead, the Exchange believes that the existence of separate corporate entities is merely part of the analysis of whether the presumption of control has, in fact, been rebutted. For example, the separate corporate entity may still have to prove to the Exchange that it meets the requirements of Interpretation .03(c) to CBOE Rule 4.11 in order to have a non-aggregated account. Of course, the Exchange may determine based on the circumstances that accounts must be aggregated for purposes of CBOE Rules 4.11 and 4.12, notwithstanding the establishment of separate corporate affiliated entities to manage those accounts.

The Exchange notes that Commission staff has taken a no-action position with respect to a broker-dealer that calculates its net position in a particular security of an individual trading unit (such as a block positioning desk) of the broker-dealer independently from other individual trading units of the broker-dealer for purposes of determining whether the broker-dealer is "net long," as that term is used in Rules 3b–3 and 10a–1 under the Act.[11] The CBOE believes that the Commission staff's recognition that trading units within a broker-dealer can operate independently from each other for purposes of the Exchange Act's "short sale" rules[12] further supports the concept that trading units within a broker-dealer may also be treated as separate, independent aggregation units for purposes of CBOE Rules 4.11 and 4.12.

Notwithstanding the Exchange's authority to grant a request for non-aggregation, the threshold for rebutting a presumption of control in the context of such a request would be high. In addition to satisfying all of the enumerated factors set forth in Interpretation .03(c) to CBOE Rule 4.11, the regulatory circular would require the member firm to satisfy additional conditions prior to the Exchange's grant of non-aggregation of the trading unit's account. Specifically, a member firm would have to (i) establish that the trading unit(s) requesting non-aggregation operates independently of other trading units of the member firm, which must include the disclosure of the trading unit's trading objective, (ii) create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the member firm that also have trading accounts,[13] (iii) maintain all trading activity of the trading unit(s) requesting non-aggregation in a segregated account and report the activity to the Exchange as such, and (iv) maintain regulatory compliance oversight and internal controls and procedures.

As set forth in the proposed regulatory circular, a member firm that is granted non-aggregation would have to comply with the following requirements: (i) retain written records of information concerning the trading unit's non-aggregated account, which must be promptly provided to the Exchange upon request, (ii) promptly provide to the Exchange a written report at such time there is any material change with respect to the non-aggregated account, at which point the Exchange will reexamine the bases for its determination of non-aggregation,[14] and (iii) provide an acknowledgement by the member firm that the Exchange reserves the right to impose additional restrictions and conditions with respect to the granting and removal of non-aggregation of the trading unit's account as the circumstances warrant.

The Exchange will review non-aggregation requests with members of the Intermarket Surveillance Group Options Sub-Group (the "Sub-Group"), which is comprised of representatives from the CBOE, American Stock Exchange, Boston Options Exchange, International Securities Exchange, Pacific Exchange and Philadelphia Stock Exchange (each, an "options exchange"). Generally, the options exchange that receives the initial request for non-aggregation ("the receiving exchange") will distribute the material to the Sub-Group members and

[7] *See* Interpretation .02 to CBOE Rule 4.11, which, as directed by CBOE Rule 4.12, delineates exercise limits for option contracts.

[8] Interpretation .03(b) to CBOE Rule 4.11 states: "In addition, control will be presumed in the following circumstances: (1) Among all parties to a joint account who have authority to act on behalf of the account; (2) among all general partners to a partnership account; (3) when an individual or entity (i) holds an ownership interest of 10 percent or more in an entity (ownership interest of less than 10 percent will not preclude aggregation), or (ii) shares in 10 percent or more of profits and/or losses of an account; (4) when accounts have common directors or management; (5) where a person or entity has the authority to execute transactions in an account."

[9] Interpretation .03(c) to CBOE Rule 4.11 states in relevant part: "Control * * * can be rebutted by proving the factor does not exist or by showing other factors which negate the presumption of control. The rebuttal proof must be submitted by affidavit and/or such other documentary evidence as may be appropriate in the circumstances. The Exchange will also consider the following factors in determining if aggregation of accounts is required: (1) Similar patterns of trading activity among separate entities; (2) the sharing of kindred business purposes and interests; (3) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/or restrictions; and (4) the degree of contact and communication between directors and/or managers of separate accounts."

[10] *See* Securities and Exchange Act Release No. 34–22695 (December 9, 1985), 50 FR 50976 (December 13, 1985) (approving SR–CBOE–82–17, which established a system of control, rather than ownership, as the determinative factor for the aggregation of accounts).

[11] *See* Wilke Farr & Gallagher, SEC No-Action Letter, (1998 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 77,483 (November 23, 1998) (the "SEC No-Action Letter").

[12] 17 CFR 240.3b–3 and 17 CFR 240.10a–1.

[13] The Exchange would review this category on a case-by-case basis. With respect to physical separation, the presumption of control becomes easier to rebut as the physical separation between the trading units increases. At the minimum, the Exchange would require trading units located on the same floor to be physically isolated from each other to the extent that the Exchange is assured that no communication will take place between individuals staffed in the applicable trading units. In addition, the Exchange would require system firewalls to be in place in order to prevent the flow of information (*e.g.*, trades, positions, trading strategies) between the trading unit(s) that receives non-aggregation treatment and other trading units controlled by the broker-dealer.

[14] The Exchange would reserve the right to freeze any position above the standard aggregation limit if the Exchange determines that aggregation is then appropriate due to changed circumstances.

thereafter discuss the request through one or more conference calls. The receiving exchange will collect input and comments from the Sub-Group members and if need be, contact the requesting member for additional information. If necessary, the Sub-Group members may participate in a conference call to pose their questions directly to the requesting member. Once a decision has been reached, the receiving exchange will draft the response letter and circulate it to the Sub-Group for comments.

2. Statutory Basis

The CBOE believes that the proposed rule change will assist Exchange members by providing guidance on how an Exchange member firm can rebut the presumption of control with respect to CBOE Rules 4.11 and 4.12 and is therefore consistent with section 6(b) of the Act [15] in general and furthers the objectives of section 6(b)(5) [16] in particular in that it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, as amended,; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

[15] 15 U.S.C 78f(b).

[16] 15 U.S.C 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–35 and should be submitted by March 11, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3578 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49221; File No. SR–EMCC–2003–08]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fund Requirements for Special Members

February 11, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 2003, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises Addendum I (Clearing Fund Requirement for Special Member) of EMCC's Rules to establish a capped clearing fund requirement of $50 million for "special members."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In rule filing SR–EMCC–2003–02, EMCC created the membership category "special member." [3] A special member is either an inter-dealer broker ("IDB") or another entity that clears for entities that are IDB's. The function of an IDB is to bring principals together in transactions on a matched and anonymous basis while taking no principal risk themselves, so if every dealer who interacted with an IDB were a member of EMCC, the IDB or its clearing firm would have to deposit only a minimal clearing fund amount. To the extent that one side of an IDB trade is not an EMCC member, the clearing fund requirement for the IDB or its clearing firm are based only on one side of the matched transaction. This one-sided calculation creates a clearing

[1] 15 U.S.C. 78S(b)(1).

[2] The commission has modified the text of the summaries prepared by EMCC.

[3] Securities Exchange Act Release No. 48366 (Aug. 19, 2003), 68 FR 51311 (Aug. 26, 2003) (EMCC–2003–02).

fund obligation of a significant financial amount for the IDB or its clearing firm.

This proposed rule change modifies the rule language adoption in SR–EMCC–2003–02 to establish a capped, as opposed to a fixed clearing fund obligation of $50 million to be deposited by special members. Under the proposed rule change, if the calculated clearing fund requirement were less than $50 million, the special member would only deposit the calculated required amount. If the calculated amount exceeds the $50 million cap for any day, the other EMCC members are required to deposit the difference between the calculated amount and the capped amount on a pro-rata basis based on their average clearing fund requirements over the previous thirty calendar day period. To have a capped clearing fund obligation of $50 million for special members was EMCC's intent in File No. SR–EMCC–2003–02.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will permit a more equitable allocation of charges among participants since it will not require a participant to deposit funds greater than the calculated required amount.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from EMCC members have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1)[5] thereunder because it constitutes an interpretation with respect to the meaning of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–EMCC–2003–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments your more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office and on EMCC's Web site at *http://www.e-m-c-c.com/legal/index.html.* All submissions should refer to File No. SR–EMCC–2003–08 and should be submitted within March 11, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3541 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78S(b)(3)(a)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49224; File No. SR–NASD–2003–192]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Section 4 of Schedule A to the NASD By-Laws

February 11, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change.[3] NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository ("CRD®" or "Web CRDSM").[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 29, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD amended the discussion of the purpose of the proposed rule change (i) to correct a reference to the NASD By-Laws and (ii) to include a discussion of NASD's multi-pronged program to help ensure that members make required disclosures on Forms U4 and U5 in a timely manner.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] The Commission notes that NASD filed the proposed rule change with an incorrect reference to section 4(b) of the Schedule A to the NASD By-Laws. In this instance, because the error was technical in nature, the Commission did not require NASD to file an amendment to the proposed rule

Continued

proposed late fee would be operative on March 8, 2004. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 4—Fees

(a) through (l) No change.

(m) NASD shall assess each member a fee of $10 per day, up to a maximum of $300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee of $10 per day, up to a maximum of $300, to be assessed against members that fail timely to report a new disclosure event or a change in the status of a disclosure event that was previously reported on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4. This fee would be assessed starting on the day following the last day on which the event was required to be reported. As further detailed below, the proposed rule change, as amended, is effective immediately upon filing and would become operative on March 8, 2004. As more fully explained below, NASD proposes to provide a six-month transition period starting on March 8, 2004, and ending on September 10, 2004, during which time NASD would waive the late fee for the first 10 days the filing is late, provided the filing is made during those 10 days. NASD represents that disclosure events, in this context, generally refer to events that require affirmative answers to the questions on Forms U4 ("Uniform Application for Securities Industry Registration or Transfer") and U5 ("Uniform Termination Notice for Securities Industry Registration") that elicit information about criminal actions, regulatory disciplinary actions, civil judicial actions, customer complaints, terminations, and financial matters (currently, Questions 14A–M on Form U4 and Questions 7A–F on Form U5). Disclosure events must be reported either 30 days or 10 days after the member learns of the triggering event, depending on the type of information to be reported. NASD represents that, with respect to the Form U4, Article 5, section 2(c) of the NASD By-Laws requires all Forms U4 filed with NASD to be kept current at all times by supplementary amendments that must be filed with NASD not later than 30 days after learning of the facts or circumstances giving rise to a reporting obligation. If such filing involves a statutory disqualification as defined in section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than 10 days after such disqualification occurs.

With respect to the Form U5, a member is required under Article V, Section 3(a) of the NASD By-Laws to give notice of the termination of a registered person not later than 30 days following the termination of the person's association with the member. Article V, Section 3(b) requires members to file an amendment to the Form U5 in the event that the member learns of facts or circumstances causing any information in the Form U5 to become inaccurate or incomplete, not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.[7]

Upon submission of a late disclosure filing, CRD® would calculate the late fee and debit the firm's CRD® account $10 per day, up to a maximum charge of $300.[8] NASD represents that the proposed rule change is part of a multi-pronged program to help ensure that members make required disclosures on Forms U4 and U5 in a timely manner. In addition to the proposed late filing fee, NASD represents that it will be issuing a Notice to Members asking members to comment on two proposals. The first proposal concerns amending the Minor Rule Violation Plan to clarify and expand the provisions governing the late filing of required registration information. The second proposal concerns adopting a rule that would enable NASD to place a broker in an inactive status if the broker and his or her firm failed to respond to an NASD notice that a disclosure event is required to be reported or updated. Further, NASD represents that its staff is implementing enhanced internal processes for reviewing all Rule 3070 filings and customer-related arbitration claims to determine whether firms have made required disclosures on Forms U4 and U5 in a timely manner. NASD represents that those firms that have demonstrated a pattern of late filings will be subject to disciplinary actions.

NASD proposes to assess late fees against members that fail timely to report a new disclosure event or a change in the status of a previously reported disclosure event on initial Forms U5 and amendments to Forms U4 and U5. With respect to amendments to Forms U4 and U5, NASD would determine whether a disclosure event (or update to a previously reported event) is being reported late by identifying the date on which the disclosure event should have been reported and comparing it to the day on which it was reported. If the event were to be reported after the 10-day or 30-day period established under NASD rules, the late fee would be assessed. In addition, NASD would assess a late fee if a member were to fail to report timely a new disclosure event or a change in the status of a previously reported disclosure event on an initial Form U5.[9]

change. In the future, the Commission expects that NASD will carefully review proposed rule changes before filing them with the Commission to ensure their accuracy.

[7] Examples of events that trigger a reporting requirement include: notice of an NASD decision or order containing findings that a registered person violated NASD rules or receipt of a customer complaint or arbitration claim that meets the reporting criteria on Forms U4 or U5.

[8] NASD recognizes that members may be prevented from filing timely disclosures if their registered persons fail to advise them of certain reportable information to which the registered persons, and not the members, are privy, such as criminal charges or bankruptcies. In such cases, NASD would consider the facts and circumstances in determining whether imposition of a late fee is appropriate.

[9] For example, NASD would assess a late fee if a member reports on an initial Form U5 a customer complaint that was received by the member three months before the registered person was

Moreover, with respect to Forms U5, a failure to file the initial Form U5 within 30 days after the date of termination would continue to subject members to an $80 late filing fee under Section 4(b)(2) of Schedule A, in addition to a late fee based on any late reporting of a disclosure event.[10]

NASD represents that it currently may bring disciplinary actions for failure to timely file amendments to Forms U4 and U5, and would continue to exercise discretion to bring such actions based on the facts and circumstances of individual cases notwithstanding the establishment of the late fee.[11] NASD represents that timely and complete reporting of such information is critical to regulators for registration, investigation and examination purposes, as well as to investors who are or who may be interested in doing business with a registered person and are seeking information through NASD's BrokerCheck Program. NASD represents that the establishment of the late fee is intended to act as a disincentive to late filing and to encourage members to timely update Forms U4 and U5.

NASD proposes to provide a six-month transition period starting on March 8, 2004, and ending on September 10, 2004. During this time, NASD would waive the late fee for the first 10 days the filing is late, provided the filing is made during those 10 days. Accordingly, NASD would not assess the first $100 (at $10 per day) if the filing were to be made during those 10 days. Instead, during the six-month transition period, the member's CRD® account would indicate that NASD has waived the late fee, thereby alerting the member it has an issue with timely reporting.

NASD would not waive any portion of the late fee for members making filings that are between 11 and 30 days late during this transition period. Such members would be charged $10 for each late day, up to $300. For example, a member reporting a disclosure event eight days late during the transition period would receive a report showing the number of days late, but would not be assessed a late fee. Conversely, a member reporting a disclosure event 11 days late during these six months would be charged $10 per late day, for a total of $110. Starting on September 13, 2004, the end of the six-month transition period, members would be charged the $10 fee beginning each day the filing is late, up to a maximum of $300.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[12] in general, and with sections 15A(b)(5) and 15A(b)(6) of the Act,[13] in particular, which require, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls, and that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASD believes that the proposed late filing fee would provide an additional incentive to NASD members to file new disclosure events or changes in the status of previously reported disclosure events on or before the date on which the event or status change is required to be reported under NASD rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD requested comment on, among other things, a late disclosure filing fee in Notice to Members 02–74 (November 2002). Specifically, NASD advised members that it was considering imposing a late disclosure filing fee as an additional safeguard to ensure data integrity, reduce or eliminate reporting gaps, and ensure that information is timely reported. Of the 58 members and individuals who filed comments, 34 commenters commented on the proposed late fee. The Association of Registration Management ("ARM") found the proposal to be reasonable, but suggested that any late fee be assessed against the responsible party (and further suggested that the registered person may be the responsible party in some cases). The North American Securities Administrators Association ("NASAA") agreed that late fees would provide an incentive to filers that do not make timely reports, and the Public Investors Arbitration Bar Association ("PIABA") supported implementation of additional safeguards to ensure timely reporting of disclosure information. A majority of these commenters believed that members, not individual brokers, should be responsible for any late fees. One commenter viewed the proposed late fee as a punitive tool that should be considered for more egregious offenses, such as failures timely to report customer complaints or regulatory actions. Three commenters expressed concern about NASD's establishing the correct "trigger" date for the reporting requirement.

NASD has considered these comments and agrees with the commenters who believe that a late fee can be an effective deterrent to late filing. NASD has also determined that since it is the members' responsibility to file initial Forms U4 and U5 and amendments to those Forms, they should also be responsible for paying late fees when the filings are late. The proposed rule would not alter the date on which disclosure filings are currently required to be made. This rule merely would serve as a further disincentive to late filing. Further, it is NASD's view that all disclosures that would be subject to the proposed rule are important, since they involve an individual's financial, regulatory, and criminal history.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[14] and subparagraph (f)(2) of Rule 19b–4

terminated. In this scenario, the member should have reported the customer complaint via an amended Form U4 within 30 days of receiving the customer complaint while the individual was still associated with the member (rather than reporting it for the first time on the Form U5 giving notice of the person's termination).

[10] Timely notice of the termination of a registered person and the reason for that termination is important information for NASD and other regulators. Accordingly, NASD will continue to assess a late fee for full Forms U5 (*i.e.*, Forms U5 giving notice of termination in all capacities with a member) that are filed more than 30 days after the member terminates the registered person. If a full Form U5 is filed late and also reports disclosure information late, NASD also will assess a late disclosure reporting fee.

[11] The Commission notes that charging a late fee in no way absolves the NASD of its duty to enforce compliance by its members with the NASD's rules or the Federal Securities laws.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(5) and 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*s*(b)(3)(A)(ii).

thereunder,[15] in that it establishes or changes a due, fee, or other charge imposed by NASD. The fee would become operative on March 8, 2004. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate this proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–192. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–192 and should be submitted by March 11, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3539 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49220; File No. SR–NASD–2003–128]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Maximum ECN Access Fee in SuperMontage and the Elimination of SuperMontage's Price/Time With Fee Consideration and Price/Size Execution Algorithms

February 11, 2004.

I. Introduction

On August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NASD Rules 4623 and 4710 to: (1) Establish a maximum level of quote/order access fees for Electronic Communications Networks ("ECNs") that elect to participate in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"); (2) eliminate SuperMontage's Price/Time with access fee consideration execution algorithm; and (3) eliminate SuperMontage's Price/Size execution algorithm. On September 10, 2003 and September 15, 2003, Nasdaq filed Amendment Nos. 1[3] and 2[4] to the proposed rule change, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on September 30, 2003.[5] On January 20, 2004, Nasdaq filed Amendment No. 3 to the proposed rule change.[6] The Commission received seventeen comment letters on the proposal, as amended.[7] On December 15, 2003, Nasdaq filed a response to the comment letters.[8] This order approves the proposed rule change, as amended.

[15] 17 CFR 240.19b–4(f)(2).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 29, 2004, the date on which NASD filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003, replacing Nasdaq's original Form 19b–4 filing in its entirety ("Amendment No. 1").

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 12, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made technical corrections to its rule text.

[5] *See* Securities Exchange Act Release No. 48501 (September 17, 2003), 68 FR 56358 ("Notice").

[6] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 16, 2004 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made technical changes to the rule text to reflect the approval of or the immediate effectiveness of other Nasdaq proposals. The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

[7] *See* letters to Jonathan G. Katz, Secretary, Commission, from Kim Bang, Bloomberg Tradebook LLC, dated October 21, 2003 ("Bloomberg Letter"); William O'Brien, Chief Operating Officer, BRUT, LLC, dated October 24, 2003 ("BRUT Letter"); Linda Lerner, General Counsel, Domestic Securities, Inc., dated October 24, 2003 ("Domestic Letter"); Gregg A. Dudzinski, Head of Equity Trading, Wm. V. Frankel & Co., dated, October 21, 2003 ("Dudzinski Letter"); Frederic Leslie, General Counsel, Hill, Thompson, Magid, L.P., dated November 7, 2003 ("Hill Thompson Letter"); Harvey Houtkin, Chief Executive Officer, dated October 22, 2003 ("Houtkin Letter"); Alex Goor, Executive Vice President, Instinet Corporation (on behalf of Instinet Corp. and the Island ECN, Inc.), dated October 22, 2003 ("Instinet/Island Letter"); Samuel F. Lek, Chief Executive Officer, Lek Securities Corp., dated December 16, 2003 ("LSC Letter"); Mark E. Yegge, Chief Executive Officer, NexTrade Holdings, Inc., dated October 13, 2003 ("NexTrade Letter"); Stephen Massocca, President & Director of Trading, Pacific Growth Equities, LLC, dated October 20, 2003 ("PGE Letter"); Josef Schaible, dated August 19, 2003 ("Schaible Letter"); Ann L. Vlcek, Vice President & Associate General Counsel, Securities Industry Association, dated October 31, 2003 ("SIA Letter"); John P. Hughes *et al.*, Chairman, Securities Traders Association, dated October 20, 2003 ("STA Letter"); Martin Cunningham, President, Security Traders Association of New York, Inc., dated October 21, 2003 ("STANY Letter"); Roderick Covlin, Executive Vice President, Track ECN, dated October 17, 2003 ("Track Letter"); and Scott W. Anderson, Director and Counsel, Region Americas Legal, UBS Securities LLC, dated October 16, 2003 ("UBS Letter"); and letter to Margaret H. McFarland, Deputy Secretary, Commission, from John H. Bluher, Executive Vice President & General Counsel, Knight Trading Group, Inc., dated, October 21, 2003 ("Knight Letter"). The Commission notes that several commenters raised issues, such as the elimination of access fees entirely, the payment and collection of access fees, and decrementation within SuperMontage, that are not at issue in the proposed rule change. At issue in the proposed rule change, in part, is whether the access fee cap being proposed is consistent with the Act. A more detailed summary of the comment letters received by the Commission is available for public inspection in the Public Reference Room at the Commission.

[8] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Terri L. Evans, Assistant Director, Division, Commission, dated December 12, 2003 ("Nasdaq Response Letter").

II. Description of the Proposed Rule Change

Currently, Nasdaq's SuperMontage system automates, in part, the matching of buy and sell trading interest using execution algorithms that limit the ability of users to select or anticipate who their counter-parties to a particular trade will be. Generally, market participants entering orders into SuperMontage are able to select between three execution algorithms by which orders that are not directed to a particular market participant may be executed. The three algorithms are based on price/time priority,[9] price/size/time priority,[10] and price/time priority that accounts for ECN quote access fees.[11] Once a market participant has entered a non-directed order in SuperMontage, the order is executed pursuant to the selected algorithm and SuperMontage rules. As a result, users entering orders into SuperMontage may execute against a variety of market participants, including ECNs that charge a separate fee to other market participants that access their quotes/orders.

In the filing, Nasdaq proposes establishing a maximum permissible quote/order access fee for ECNs that elect to participate and execute transactions in SuperMontage. Under Nasdaq's proposal, the maximum SuperMontage ECN access fee would be capped at $0.003 (three mils) per share. Participating ECNs would be free to charge quote/order access fees equal to or less than the $0.003 maximum.

ECNs that desire to charge more than three mils for access to their quotes/orders would not be permitted to post liquidity in SuperMontage as NNMS ECNs. They would, however, be permitted to continue to participate in SuperMontage as NNMS Order Entry Firms.[12] As NNMS Order Entry Firms, those ECNs would have any quotes/orders entered into the system displayed and processed in the same manner as other NNMS Order Entry Firms. This would include having their quotes/orders represented only via the SIZE MMID and also making them subject to automatic execution.[13] As NNMS Order Entry Firms, these ECNs would not be allowed to impose *any* fee on a broker-dealer that accesses them through the SuperMontage system. As NNMS Order Entry Firms, such ECNs would be eligible for Nasdaq's liquidity provider rebate.[14]

In concert with establishing a maximum ECN quote access fee, Nasdaq proposes eliminating the Price/Size and the Price/Time with fee consideration execution algorithms currently available in SuperMontage.[15] Nasdaq proposes to implement all three changes simultaneously and within thirty days of any approval order issued by the Commission.[16]

III. Summary of the Comments and Nasdaq's Response

The Commission received seventeen comment letters on the proposed rule change, as amended.[17] Three commenters supported the proposed rule change, although one of these commenters recommended modifying the proposed rule change.[18] Six commenters expressed general support for the NASD and Nasdaq's efforts to establish a maximum ECN access fee, but sought to have ECN access fees completely abolished.[19] Of those commenters, three commenters explicitly supported approving the Nasdaq proposal as an interim measure.[20] One commenter, the SIA, noted that its members had divergent views on the proposal, although there was support, albeit not unanimous support, for the proposal. According to the SIA, some firms viewed the cap as a fair compromise, while others considered it a good interim measure.[21] Seven commenters opposed the proposal.[22]

A. ECN Access Fees

Several commenters generally supported Nasdaq's proposed maximum ECN access fee, because they believed that it would encourage more liquidity by easing fee concerns of various market

[9] Generally, in the price/time algorithm, non-directed orders are executed (within each price level) as follows: (1) Displayed quotes/orders of market makers, ECNs, non-attributable quotes/orders of NNMS Order Entry Firms, and non-attributable agency interest of UTP Exchanges, in time priority; (2) reserve size of market makers, NNMS Order Entry Firms, and ECNs, in time priority; and (3) principal quotes/orders of UTP Exchanges, in time priority. *See* NASD Rule 4710(b)(1)(B)(i).

[10] Generally, in the price/size/time algorithm, non-directed orders are executed (within each price level) as follows: (1) Displayed quotes/orders of market makers, ECNs, non-attributable quotes/orders of NNMS Order Entry Firms, and non-attributable agency interest of UTP Exchanges, in size/time priority; (2) reserve size of market makers, ECNs, and NNMS Order Entry Firms, in size/time priority, with size priority based on the size of the related displayed quote/order; and (3) principal quotes/orders of UTP Exchanges, in size/time priority. *See* NASD Rule 4710(b)(1)(B)(iii).

[11] Generally, in the price/time that accounts for ECN quote access fees algorithm, non-directed orders are executed (within each price level) as follows: (1) Displayed quotes/orders of market makers, ECNs that do not charge a separate quote access fee, non-attributable quotes/orders of NNMS Order Entry Firms, and non-attributable agency interest of UTP Exchanges, as well as quotes/orders of ECNs that charge a separate quote access fee where the ECN indicates that the price improvement offered by the quote/order is equal to or exceeds the quote access fee, in time priority; (2) displayed quotes/orders of ECNs that charge a separate quote access fee to non-subscribers that do not indicate that the price improvement offered by the specific quote/order is equal to or exceeds the access fee, in time priority; (3) reserve size of market makers, NNMS Order Entry Firms, and ECNs that do not charge a separate quote access fee to non-subscribers, as well as reserve size of quotes/orders from ECNs that charge a separate quote access fee to non-subscribers where the ECN entering such quote/order has indicated that the price improvement offered by the specific quote/order is equal to or exceeds the quote access fee, in time priority; (4) reserve size of ECNs that charge a separate quote access fee to non-subscribers that do not indicate that the price improvement offered by the specific quote/order is equal to or exceeds the quote access fee, in time priority; and (5) the principal interest of UTP Exchanges, in time priority. *See* NASD Rule 4710(b)(1)(B)(ii).

[12] An NNMS Order Entry Firm is defined in NASD Rule 4701(w) as a member of the NASD who is registered as an Order Entry Firm for purposes of participation in the NNMS. In its proposed rule change, Nasdaq is amending this definition to clarify that the term would also include ECNs or Alternative Trading Systems ("ATSs") that fail to meet the NASD Rule 4623 requirements for ATSs. Nasdaq is also amending the definition of NNMS Order Entry Firm to clarify that they cannot charge any fee to a broker-dealer that accesses its quote/order through NNMS.

[13] NNMS Order Entry Firms may enter orders that are displayed anonymously through SIZE. These displayed orders are subject to automatic execution. *See* NASD Rules 4701(g), 4707(b)(2), and 4710(b)(1)(A)(i).

[14] ECNs that participate as NNMS ECNs and charge a separate access fee are not entitled to receive a liquidity provider rebate. *See* NASD Rule 7010(i). Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Special Counsel, Division, Commission, on January 27, 2004.

[15] Elimination of these two execution algorithms will leave only the Price/Time priority execution algorithm in SuperMontage. *See supra* notes 9 through 11.

[16] Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri L. Evans, Assistant Director, Division, Commission, on February 2, 2004.

[17] *See supra* note 7.

[18] *See* BRUT Letter, Instinet/Island Letter, and Track Letter (strongly supporting the Nasdaq proposal, but recommending that Nasdaq amend the proposal to mandate that market participants pay the newly capped ECN access fees).

[19] *See* Dudzinski Letter, Hill Thompson Letter, Knight Letter, STA Letter, STANY Letter (noting that the majority of its membership applauded and supported the NASD's proposal), and UBS Letter.

[20] *See* Dudzinski Letter, Hill Thompson Letter, and Knight Letter.

[21] However, the SIA stated that its members believed that the Commission "must act without delay to develop a market-wide solution that levels the playing field for all market participants."

[22] *See* Bloomberg Letter, Domestic Letter, Houtkin Letter, LSC Letter, NexTrade Letter, PGE Letter, and Schaible Letter. Commenters opposed the proposal for several reasons, as more fully discussed herein. For example, Bloomberg believed that the Commission, not Nasdaq, should address the issue of access fees and PGE believed that the Nasdaq proposal would "only serve to confuse the issue" in light of the Commission's prior statements that it intended to address this issue. LSC believed that the Commission should withhold approval of the proposal and clarify that ECN access fees are anticompetitive and violate the securities laws.

participants,[23] or lower excessive burdens that are involuntarily imposed upon SuperMontage participants.[24] BRUT also believed that Nasdaq had done an admirable job reconciling the differences among SuperMontage participants, while utilizing its regulatory authority in a non-partisan fashion.

1. Burden on Competition and Conflicts of Interest

BRUT believed that the current proposal represented a fair and balanced effort to "resolve an issue that has been the source of contention in the nation's equity markets since the Commission's adoption of the Order-Handling Rules in 1996." Further, commenters opined that the availability of other trading venues, such as the NASD's Alternative Display Facility ("ADF") and exchanges, such as the Cincinnati Stock Exchange,[25] either removed concerns that Nasdaq was attempting to misuse its authority at the expense of ECNs[26] or provided alternatives for ECNs.[27]

However, several commenters believed that the proposed rule change was anti-competitive or an attempt by the NASD to set prices.[28] These commenters believed that the proposal was designed to eliminate competition,[29] require ECNs to change their business model of providing rebates,[30] or force ECNs to migrate away from SuperMontage and its order routing capabilities.[31] In addition, two commenters suggested that the proposed rule change reflected a conflict of interest between the NASD and Nasdaq because the NASD currently owns Nasdaq, and they believed that the NASD was overstepping its bounds by proposing a fee cap that, according to the two commenters, benefits Nasdaq, but hurts ECNs.[32]

Nasdaq responded to commenters' concerns that Nasdaq proposed the access fee cap for anticompetitive reasons. Nasdaq asserted that the proposal was not anticompetitive because it selected a maximum ECN access fee cap that was closely linked to the rates charged by the most competitive and liquid ECNs and substantially similar to fees already in existence in the Nasdaq market. Nasdaq believed that this formed the best basis for determining an appropriate access fee cap in the absence of a uniform standard imposed by the Commission. Further, Nasdaq asserted that the Commission had repeatedly recognized that in some instances self-regulatory organizations ("SROs") compete with their members, and that SuperMontage is a voluntary system and market participants that oppose the access fee cap have the option of posting trading interest in other market centers.

2. Best Execution

Commenters asserted that because ECN access fees are hidden, an ECN's quote does not reflect the true price available at an ECN, make best execution difficult, and cause distortions and lack of market transparency.[33] However, two commenters contended that as long as ECN fees remain below one cent, a customer would always receive the best execution, even including the ECN fee, provided that the ECN quotation is better than the next highest quote.[34] NexTrade also believed that the forced migration of ECNs to other market centers would exacerbate best execution concerns, increase fragmentation, remove liquidity and transparency, and widen spreads since fewer participants would be involved in providing liquidity to Nasdaq.

In response to the comments that the proposal would exacerbate best execution concerns, Nasdaq stated that the proposed rule change was an important step in re-focusing best-execution compliance on the actual price of a security rather than the current pre-occupation with transaction costs like ECN access fees. According to Nasdaq, such transaction costs are highly subjective and variable across the universe of ECNs and counter-parties. Nasdaq believed that its proposal enabled users to better predict the costs of trading for their customers and to take appropriate actions to meet their best execution obligations.

3. Basis for ECN Access Fee Cap

BRUT and Instinet/Island believed that Nasdaq had an appropriate basis for its access fee cap. BRUT believed that the proposal reflected a rate structure already in place for the vast majority of customers of ECNs and similar facilities on a volume-weighted basis, and preserved consistency with Nasdaq's own access fee. Instinet/Island also emphasized that if the proposal was adopted, the maximum difference in total transaction fees in a SuperMontage transaction involving both non-access fee charging participants and fee charging ECNs would be reduced from the current $0.007 per share to $0.001 per share.

Further, Instinet/Island opined that "[c]ertain ECNs are charging access fees in SuperMontage that bear no relation to the market's value of the service they are providing, as clearly evidenced by the fact that as a result of competition, the significant entities in the provision of this service (*i.e.*, Archipelago Exchange, BRUT, Instinet, Island, and NASDAQ) all charge access fees at a level equal to or below $0.003 per share. In effect, certain ECNs on SuperMontage are taking advantage of SuperMontage's order processing behavior to extract economic rents from other SuperMontage users." According to Instinet/Island, SIA, and UBS, disparities are of particular concern in an automated system like SuperMontage that matches buying and selling interest through execution algorithms that limit the ability of users to select or anticipate their counter-parties to a particular trade.[35] Knight also stated that as a result of the disparity in ECN access fees, an ECN access fee could raise Knight's execution cost in SuperMontage anywhere from 23 percent to 233 percent.[36]

Other commenters believed that Nasdaq failed to provide a basis for its proposal[37] and arbitrarily proposed a rate equal to the rate Nasdaq already charges.[38] NexTrade believed that the Commission permitted an access fee of $0.009.[39] Further, NexTrade and Schaible believed that Nasdaq set the maximum ECN fee too low and that it would be impossible to charge $0.003

[23] *See* Track Letter; *see also* BRUT Letter.

[24] *See* UBS Letter (further stating that the Commission needs to act on this issue).

[25] The Commission notes the Cincinnati Stock Exchange recently changed its name to the National Stock Exchange. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003).

[26] *See* BRUT Letter.

[27] *See* Instinet/Island Letter; *see also* Knight Letter.

[28] *See* Domestic Letter, Houtkin Letter, NexTrade Letter, and Schaible Letter.

[29] *See* Domestic Letter, Houtkin Letter, NexTrade Letter, and Schaible Letter.

[30] *See* Domestic Letter.

[31] *See* Domestic Letter, NexTrade Letter, and Schaible Letter.

[32] *See* Houtkin Letter and Schaible Letter; *see also* NexTrade Letter (stating that Nasdaq and the NASD have a financial incentive to eliminate ECNs from their marketplace).

[33] *See* STA Letter and STANY Letter; *see also* Dudzinski Letter (stating that access fees can mire price discovery by masking a transactions true cost).

[34] *See* Houtkin Letter and NexTrade Letter.

[35] *See also* Hill Thompson Letter and Knight Letter (noting there is no competition with respect to access fees in SuperMontage).

[36] According to UBS, the "seemingly random manner of this assessment and the current wide disparity among the fees themselves, deprives non-ECN market participants of the ability to effectively forecast execution fees."

[37] *See* Domestic Letter, Houtkin Letter and NexTrade Letter.

[38] *See* Bloomberg Letter and Houtkin Letter.

[39] *See also* Schaible Letter.

per share and remain profitable.[40] They also believed that Nasdaq's current fee schedule was inconsistent with the Nasdaq's proposed rule change to establish a maximum $0.003 access fee because Nasdaq charged more than three-tenths of a cent for transactions occurring on SuperMontage. However, Knight, for example, distinguished between fees charged by market centers to which members or subscribers voluntarily route orders to, and fees charged by ECNs through SuperMontage for orders that may be involuntarily routed to the ECNs as a result of the SuperMontage execution algorithm.[41]

In response to these commenters, Nasdaq stated that it decided on the maximum $0.003 access fee based on its understanding of the current, competitively-derived, fee structure and the need to allow further competition on fees. In Nasdaq's view, the lack of notice to counter-parties as to their expected costs because of the range in ECN access fees when utilizing SuperMontage impacts the willingness of market participants to use the system. Nasdaq disagreed with the assertion of one commenter that informing market participants of the highest possible fee, $0.009, would solve this problem since such an approach would deter market participants that consider potential transaction costs from routing orders to SuperMontage. Nasdaq also distinguished between the fees it charges and the fees charged by ECNs. According to Nasdaq, its fees are public, equally applicable to all users, and subject to specific Commission review. In addition, Nasdaq believed that the access fees at the heart of its proposal are those that ECNs seek to impose, not on subscribers interacting directly using the ECN's systems, but counter-parties who interact with them only because of SuperMontage's neutral execution algorithms.

4. Consistency With Sections 6(e) and 15A of the Act

Instinet/Island believed that the proposed ECN access fee cap was consistent with section 15A of the Act. Further, BRUT believed that the authority of SROs to police access fees in the facilities they operate was well established and cited to the Commission's releases approving the Order Handling Rules and Regulation ATS as support.[42]

Bloomberg and LSC, however, believed that the Nasdaq proposal was inconsistent with section 6(e)(1) of the Act, which prohibits a national securities exchange from fixing rates of commissions, allowances, discounts or other fees.[43] In addition, PGE, which opposed the proposal, and Hill Thompson, which supported the proposal, both believed that it was inconsistent with section 15A of the Act to allow one group of market participants to charge access fees, while requiring other market participants to provide access to their quotes/orders free of charge. Additionally, Schaible believed that the proposal was inconsistent with the Order Handling Rules.

Nasdaq disagreed with commenters who asserted that the proposal was inconsistent with section 6(e) of the Act. With respect to section 6(e) of the Act, Nasdaq stated that because it is not yet registered as a national securities exchange, section 6(e) is currently inapplicable to the proposal. Nasdaq believed, however, that Regulation ATS specifically permits exchanges to establish access fee standards.

B. Elimination of SuperMontage Algorithms

Several commenters supported the elimination of the two algorithms, in particular the algorithm that takes into account fees.[44] Specifically, Track believed that the elimination of the Price/Time algorithm that took into account fees would benefit ECNs participating in SuperMontage by providing them with the same price/time priority as other participants and thus, leveling the playing field.[45] Further, BRUT and Instinet/Island opined that the algorithm taking into account ECN access fees could no longer be justified if the ECN access fee cap was adopted.

PGE, however, opposed the elimination of the Price/Time algorithm that takes into account fees until the market structure and associated legal issues surrounding ECN access fees were resolved to ensure a choice with regard to incurring such fees. The SIA stated that while some of its firms supported the complete elimination of both algorithms because they would no longer be necessary, other members supported retaining the algorithms.

In response, Nasdaq stated that it linked the establishment of the maximum ECN access fee with the elimination of the Price/Time with fee consideration algorithm to foster price/time priority within SuperMontage. Nasdaq believed that the establishment of a maximum access fee cap created the appropriate framework to eliminate the execution algorithm that considered ECN access fees.

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters, and Nasdaq's response to comment letters, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[46] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.[47] For the reasons discussed below, the Commission finds that Nasdaq's proposal to establish a maximum ECN access fee and to eliminate the two execution algorithms is consistent with the Act.[48]

[40] Several commenters recommended alternatives to Nasdaq's proposal. *See* Domestic Letter, Houtkin Letter, LSC Letter, and Schaible Letter. For example, Domestic and Houtkin suggested raising the maximum fee to $0.005 or $0.009, respectively.

[41] *See also* Dudzinski Letter and SIA Letter. Dudzinski believed that any system has a right to charge for the voluntary submission of orders, and that this would ensure innovation through competition.

[42] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release"); and Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Release").

[43] LSC agreed with Nasdaq that ECNs imposing access fees on other participants as they see fit might constitute a fraudulent and manipulative act and violate just and equitable principals of trade for purposes of section 15A of the Act, but asserted that fixing commissions was also violative of section 6(e) of the Act and not the solution. *See* LSC Letter.

[44] *See* BRUT Letter, Instinet/Island Letter, and Track Letter.

[45] *See also* BRUT Letter.

[46] In approving this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78o–3(b)(6).

[48] In approving the proposed rule change pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission is not required to, and has not determined that, the proposed rule change is the only appropriate mechanism to achieve Nasdaq's goals.

A. Nasdaq's Proposed Maximum ECN Access Fee

Rule 301(b)(4) of Regulation ATS provides, in relevant part, that an ATS[49] shall not charge any fee to broker-dealers that access the ATS through a national securities association that is inconsistent with equivalent access to the ATS.[50] In addition, if a national securities association establishes rules designed to assure consistency with standards for access to quotations displayed in the association, the ATS cannot charge any fee to members that is contrary to or inconsistent with any standard of equivalent access established by the rules. In the Regulation ATS Release, the Commission stated that fees charged by an ATS would be inconsistent with equivalent access if they had the effect of creating barriers to access for non-subscribers.[51] Further, the Commission believed that ECN fees should be similar to the communications or systems charges imposed by various markets[52] and that SROs should have the authority to assure that fees charged to non-subscribers were consistent with the fees typically charged by the members of the SRO for access to displayed orders.[53] For example, an association could establish a standard for what constitutes a fair and reasonable fee for non-subscriber access to an ATS, consistent with the effective operation of the SRO's market and the Commission's equivalent access requirement.[54] The Commission contemplated at the time that SROs could limit (or eliminate entirely) access fees, subject to Commission review.[55]

Specifically, the Commission stated that for a rule to be approved by the Commission, the rule must be necessary to maintain consistency within the SRO's market, and be designed to promote just and equitable principles of trade, to promote fair competition, to facilitate transactions in securities, and in general, to protect investors and the public interest. The Commission believes that Nasdaq's proposal satisfies these requirements and is consistent with the Act.

The Commission recognizes that, over the years, certain ECNs have based their business models on charging access fees well above the access fees charged by other ECNs. The Commission agrees with commenters that such disparity in ECN access fees in a system like SuperMontage, which extensively automates the matching of buy and sell trading interest using execution algorithms, has had a detrimental impact on the system and its users. In particular, the Commission notes that the inability of system users to reasonably anticipate their trading costs due to hidden ECN access fees may discourage market participants from entering their quotes/orders into SuperMontage, thereby depriving all SuperMontage users of beneficial liquidity.[56] Consequently, the Commission believes that Nasdaq's proposal may attract new order flow to SuperMontage, increasing liquidity and promoting greater competition among market centers.

Furthermore, the Commission believes that Nasdaq's proposal to set a maximum ECN cap is necessary to maintain consistency within the Nasdaq market and with the equivalent access requirement. Some of the current ECN access fees for ECNs that elect to participate in SuperMontage are not consistent with the fees typically charged by other NASD members and, thus, may discourage non-subscriber broker-dealers from accessing ECN prices. In practice, some ECNs charge considerably more than other ECNs, and this may be due in part to the lack of competition with respect to access fees in SuperMontage.[57] As a result, the Commission believes that some ECNs may rely on SuperMontage's order processing in order to charge higher fees to other SuperMontage users and still receive orders through SuperMontage. As indicated by Knight, differences in ECN access fees can add significant non-transparent costs to securities transactions. This may be inconsistent with the fair access standards imposed in the Order Handling Rules and Regulation ATS. Further, as noted by PGE and Hill Thompson, market makers, unlike ECNs, are prohibited from charging an access fee in addition to their posted quote.[58] Approval of the proposed rule change should help assure that no SuperMontage participant will be able to impose a fee that results in substantially higher execution costs to other participants, consistent with the equivalent access requirement.[59] As one commenter noted, the proposed rule change would effectively reduce the disparity in transaction costs between non-access fee charging participants and fee charging ECNs from $0.007 to $0.001 per share.[60] The Commission, therefore, believes that the proposed maximum access fee cap should promote fair competition and just and equitable principles of trade within the Nasdaq market and is consistent with the protection of investors and the public interest.

The Commission also believes that the Nasdaq proposal should encourage greater transparency by maintaining a closer relationship between displayed prices in the montage and effective execution prices obtained by market participants that interact with fee-charging ECNs. As a result, the maximum access fee cap may further facilitate transactions in securities by allowing market participants to rely on comparability of quotations across all participants within SuperMontage.

[49] An ECN is a subgroup of ATSs.

[50] 17 CFR 242.301(b)(4).

[51] *See* Regulation ATS Release, *supra* note 42, at 70871; *See also* Order Handling Rules Release, *supra* note 42, at note 272.

[52] *See* Regulation ATS Release, *supra* note 42, at 70871.

[53] *See* Regulation ATS Release, *supra* note 42, at 70871; *See also* "Interpretive Guidance on the Order Execution Rules," letter from Richard R. Lindsey, Director, Division, Commission, to Richard Grasso, Chairman and Chief Executive Officer, New York Stock Exchange, Inc., dated November 22, 1996 ("Interpretive Guide"), at 12. In the Interpretive Guidance, the Division stated that "an SRO may set reasonable conditions on whether an ECN should be allowed access to the SRO's market," and added that "an SRO may require that the prices displayed in its market by an ECN not include fees or other charges if the SRO believes this is necessary to make these prices consistent with other quotes in its market." *See* Interpretive Guide, at 11–12.

[54] *See* Regulation ATS Release, *supra* note 42, at 70871.

[55] *See* Regulation ATS Release, *supra* note 42, at 70872.

[56] *See* Notice, *supra* note 5 and Track Letter; *See also* BRUT Letter.

[57] *See* Instinet/Island Letter. The Commission notes that the following ECNs charge approximately three mils: BRUT's access fee for subscribers executing over 50,000 shares per day is currently $0.0027 per share, while subscribers under this threshold are currently charged $0.005 per share; INET charges $0.003 for trades that remove liquidity from the INET book; and Track charges up to $0.0029 for orders that remove liquidity from its book. *See* BRUT Letter (noting that BRUT anticipates modifying its rate structure upon approval of the proposed rule change); *http://www.island.com/prodserv/bd/fee/fee.asp;* and *http://www.trackecn.com.* NexTrade, however, on its website, merely stated that the "SEC has authorized NexTrade to charge a rate up to $0.009 per share for each order matched on NexTrade's ECN." *See http://www.nextrade.com/company/overview.asp.* The Commission notes, however, that it has not expressed a view regarding the appropriateness of any specific access fee.

[58] Market makers are prohibited from charging access fees under the Quote Rule. *See* Rule 11Ac1–1(c)(2), 17 CFR 240.11Ac1–1(c)(2).

[59] *See* Regulation ATS Release, *supra* note 42, at 70870–70871.

[60] *See* NASD Rule 7010(i). Generally, Nasdaq participants are charged between $0.0025 and $0.003 for non-directed orders that access the quotes/orders of market participants that do not charge a fee, while Nasdaq participants that access the quotes/orders of market participants that charge a fee are charged $0.001 plus the ECN fee. *See* Securities Exchange Act Release No. 48972 (December 22, 2003), 68 FR 75301 (December 30, 2003). With the approval of the proposed rule change and the maximum ECN access fee of $0.003, the difference between accessing a fee charging participant and a non-fee charging participant is essentially $0.001.

Furthermore, the Commission believes that Nasdaq has adequately addressed concerns regarding the basis for its maximum access fee. The Commission believes that Nasdaq, in proposing this maximum ECN access fee, has attempted to accommodate the business models of ECNs with other SuperMontage users and the manner in which they participate in SuperMontage. As a result, the Commission believes that the maximum ECN access fee of $0.003 should help to ensure a more level playing field for market participants that elect to participate in SuperMontage.

The Commission also believes that Nasdaq has adequately addressed concerns regarding Nasdaq's basis for the competitive impact of the proposed rule change and the conflict of interest between Nasdaq and the NASD. According to Nasdaq, the proposal was not anti-competitive because it selected a maximum ECN access fee cap that was closely linked to the rates charged by the most competitive and liquid ECNs and substantially similar to fees already in existence in the Nasdaq market. Further, Nasdaq asserted that the Commission had repeatedly recognized that in some instances SROs compete with their members, and that SuperMontage is a voluntary system and market participants that oppose the access fee cap have the option of posting trading interest in other market centers.

The Commission has previously recognized that conflicting roles are inherent in the SRO model since SROs act not only as regulators, but also as operators of markets.[61] The Commission does not believe that the proposed rule change is anti-competitive since Nasdaq has the authority (delegated by the NASD), consistent with Rule 301(b)(4), to establish rules designed to assure consistency with standards of access to quotations displayed on its facilities, subject to Commission approval. The Commission believes that the effect of the proposed rule change is not to limit competition with SuperMontage but to prevent ECNs from using SuperMontage to impose non-competitive fees on other SuperMontage participants. As discussed above, the Commission believes that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder. While NexTrade and Schaible contend that Nasdaq charges more than $0.003, the Commission notes that Nasdaq does not charge for the entry or cancellation of non-directed orders (other than the entry of orders preferenced to a particular market participant) into SuperMontage[62] and that Nasdaq only charges up to $0.003 per share for orders executed within SuperMontage, which is consistent with the proposed rule change.[63] To the extent ECNs want to charge fees in excess of $0.003, the Commission notes that participation on SuperMontage is voluntary and that ECNs are free to trade on other venues. In response to suggestions that the NASD has a conflict of interest relating to Nasdaq and is seeking to exclude ECNs that compete within SuperMontage, the Commission notes that the access fee cap is intended to encourage entry of orders into SuperMontage, and thereby encourage participation by market makers *and* ECNs.

The Commission also notes that some commenters believed that Nasdaq should not be allowed to set a maximum ECN access fee at all because doing so would be inconsistent with section 6(e) of the Act.[64] In particular, Bloomberg and LSC opined that the proposal was inconsistent with section 6(e)(1) of the Act because the proposal fixed the rates of fees charged by members of a national securities exchange.[65] According to Bloomberg, "[w]hile section 6(e)(1) was adopted to deal specifically with the rules of national securities exchanges that * * * had fixed minimum brokerage commission rates, the section cuts more broadly than that and also prohibits fixed maximum rates of commissions, allowances, discounts or other fees."

Section 6(e)(1) was adopted by Congress in 1975 to statutorily prohibit the fixed minimum commission rate system.[66] Congress prohibited any national securities exchange from fixing commissions and fees to be charged by its members unless they were first filed with the Commission pursuant to section 19(b) of the Act and were found by the Commission to be "reasonable in relation to the costs of providing the service and necessary to accomplish the purposes of the Exchange Act."[67] Section 6(e)(1) of the Act, in relevant part, provides that "no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members * * *."[68] In addition, section 15A(b)(6) of the Act, in relevant part, provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees charged by its members * * *."[69]

The Commission has considered the commenters' concerns regarding this issue and has determined that the provisions of sections 6(e)(1) and 15A(b)(6) of the Act regarding fixed commissions are not implicated by Nasdaq's proposal. As noted in the House Report, one of the purposes of the legislation was to "reverse the industry practice of charging fixed rates of commissions for transactions on the securities exchanges."[70] The fixed minimum commission rate system allowed exchanges to set minimum commission rates their members had to charge their customers, but allowed members to charge more. The House Report further noted that this practice had produced distortions in trading patterns, impacted unfairly on various classes of investors, and erected competitive impediments to the development of an efficient national market system, and stated that fully competitive commission rates are necessary to the efficient functioning of the securities markets.

The Commission does not believe that Nasdaq's proposal to establish a maximum ECN access fee of $0.003 constitutes fixing commissions, allowances, discounts or other fees for purposes of sections 6(e)(1) and

[61] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[62] *See* NASD Rule 7010(i).

[63] *See* NASD Rule 7010(i) and note 58; *see also* Securities Exchange Act Release No. 48972 (December 22, 2003), 68 FR 75301 (December 30, 2003). The fees for entering or canceling directed or preferenced orders are higher. However, in that instance, the market participant entering the order has voluntarily, using SuperMontage, sent the order to a particular market participant, and is aware of the applicable fees that will be charged in SuperMontage. *See* NASD Rule 7010(i). Market participants, however, can and do access other market participants outside of SuperMontage.

[64] *See* LSC Letter, PGE Letter, and Hill Thompson Letter. The Commission notes that, although Nasdaq is currently not a national securities exchange and that Section 6(e)(1) does not apply to it, Nasdaq does have an exchange application pending with the Commission. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). In addition, the Commission notes that Section 15A(b)(6) of the Act contains language similar to Section 6(e)(1).

[65] LSC further stated that "there can be no doubt about the fact that with the Securities Act Amendments of 1975 Congress banned a system of fixed regulated commissions in favor of competition."

[66] H.R. Rep. No. 94–123, 94th Cong., 1st Sess. 42 (1975) ("House Report").

[67] S. Rep. No. 94–75, 94th Cong., 1st Sess. 61 (1975).

[68] 15 U.S.C 78f(e)(1).

[69] 15 U.S.C 78o–3(b)(6).

[70] *See* House Report, *supra* note 66.

15A(b)(6) because Nasdaq's proposal allows ECNs participating in SuperMontage the ability to charge a range of other rates—anything from no fee to $0.003.[71] In addition, the maximum ECN access fee applies only to ECNs that choose to participate in SuperMontage. Therefore, Nasdaq is not fixing fees generally; it is merely imposing a condition, consistent with the equivalent access requirement, for receiving executions through SuperMontage. ECNs that want to charge more than $0.003 can send their quotes/orders to other venues, such as the ADF. Furthermore, ECNs that choose to charge more than $0.003 would not be completely barred from participating in SuperMontage. Such ECNs could elect to participate in, for example, the ADF and charge more than $0.003 per share, and would still be permitted to access and post liquidity in SuperMontage as an NNMS Order Entry Firm, but could not charge any access fee in SuperMontage.[72] As NNMS Order Entry Firms, those ECNs would have any quotes/orders entered into SuperMontage displayed and processed in the same manner as other NNMS Order Entry Firms and would be entitled to receive a liquidity provider rebate. Furthermore, the Commission agrees with BRUT and Nasdaq that an SRO's ability to establish access fee standards is specifically permitted by Regulation ATS. Accordingly, the Commission believes sections 6(e) and 15A(b)(6) of the Act are not implicated by Nasdaq's proposal and believes that Nasdaq has reasonably attempted to balance the divergent interests of SuperMontage users, including ECNs, in a manner consistent with the Act.

Two commenters stated that as long as ECN access fees remain below $0.01, a customer will always receive best execution (even with the access fee included in the price), if the ECN's quote is better than the quote at the next price level.[73] In addition, NexTrade believed that Nasdaq's proposal would force ECNs to other market centers, thereby exacerbating best execution concerns.[74]

The Commission notes that the argument raised by Houtkin and NexTrade is applicable only if ECNs that charge the highest access fees are the last trading interest to be accessed at a particular price level. Otherwise, their higher fees result in inferior executions at the same displayed price. Furthermore, to the extent that some ECNs charge higher access fees, these fees would substantially reduce the value of these quotes, so that the net price offered is at times minimally better than the next best displayed price. If the fee cap reduces the fees attached to these quotes, the resulting net price would be improved. Moreover, the Commission believes that the fee cap may encourage greater use of the system, which could encourage market makers and ECNs to offer better prices in the system, improving the execution of orders and thus, enhancing competition. Furthermore, Nasdaq is proposing to remove the algorithms that take into account size or access fees from SuperMontage.[75] As a result, the orders of ECNs would be accessed under the same Price/Time priority algorithm as other market participants, instead of potentially being accessed last as a result of the "Price/Time with fee consideration" algorithm.[76] To the extent there are concerns about increased fragmentation in the event ECNs migrate out of SuperMontage, the Commission notes that ECNs are currently able to and do participate in other markets.

The Commission believes that Nasdaq's proposal to establish a maximum ECN access fee should help to alleviate the concerns of market participants relating to their ability to obtain the best execution for customer orders. The Commission notes that some commenters raised best execution concerns related to hidden ECN access fees.[77] Currently, there is limited incentive for ECNs within SuperMontage to reduce their access fees on their own. Therefore, the Commission believes that capping ECN access fees at $0.003 per share should reduce fee disparities among ECNs within SuperMontage and enable market participants to ensure that their customers' orders receive best execution.

B. Elimination of the Price/Time With Fee Consideration and Price/Size Algorithms

The Commission believes that the elimination of the Price/Time with fee consideration execution algorithm in connection with Nasdaq's proposed maximum ECN access fee is reasonable. The Commission notes that, while several commenters supported eliminating the algorithm,[78] PGE and some members of the SIA opposed the elimination of the Price/Time with fees algorithm, even with the proposed fee cap. The Commission believes that Nasdaq's proposal balances the interests of its market participants and is reasonable in light of Nasdaq's proposed access fee cap. The Commission also believes that the elimination of the Price/Size algorithm, along with the Price/Time with fees algorithm, should allow Nasdaq to reduce system complexity within SuperMontage by eliminating two of three algorithms and promote greater price/time priority within the system.[79]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[80] that the proposed rule change (SR–NASD–2003–128), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[81]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3540 Filed 2–18–04; 8:45 am]

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[71] Currently, pursuant to a series of no-action letters issued by the Division, ECNs may charge fees to non-subscribers in amounts equal to those that they charge a "substantial proportion" of their active broker-dealers subscribers, but no more than $0.009 per share. The Commission has not, however, expressed a view regarding the appropriateness of any specific access fee. No-action letters are posted to the Commission's Web site at *http://www.sec.gov/divisions/marketreg/mr-noaction.htm#ecns*.

[72] Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Special Counsel, Division, Commission, on January 27, 2004.

[73] *See* Houtkin Letter and NexTrade Letter.

[74] NexTrade added that Nasdaq failed to study the impact of its proposal on best execution and investors.

[75] *See supra* note 15 and accompanying text.

[76] *Id.; see also* discussion in *supra* notes 57 through 58 and accompanying text.

[77] *See* STA Letter and STANY Letter; *see also* Dudzinski Letter.

[78] *See* BRUT Letter, Instinet/Island Letter, and Track Letter.

[79] According to Nasdaq, the Price/Size algorithm is rarely used in SuperMontage and accounts for less than seven percent of orders entered into the system. *See* Notice, *supra* note 5.

[80] 15 U.S.C. 78s(b)(2).

[81] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49218; File No. SR–NYSE–2003–31]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Order Granting Accelerated Approval to the Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Minor Revisions to Sections 303A.08, 303.00, and 312.03 of the NYSE's Listed Company Manual

February 11, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 9, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend section 303.00 ("Corporate Governance Standards"), section 303A.08 ("Shareholder Approval of Equity Compensation Plans"), and section 312.03 ("Shareholder Approval") of the NYSE's Listed Company Manual. The NYSE represents that the proposed rule amendments reflect a need for minor clean-up revisions that became apparent following the addition of section 303A.08 to the NYSE's Listed Company Manual.

The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 16, 2002, the NYSE filed with the Commission amendments to its Listed Company Manual to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices (the "Corporate Governance Proposals").[4] On October 7, 2002, the NYSE filed certain of the proposals included in the Corporate Governance Proposals, including section 303A.08 providing for shareholder approval of equity-compensation plans and amendments to NYSE Rule 452, "Broker No-Votes," to comply with a request from the Commission staff to address this issue separately from the remainder of the Corporate Governance proposals (the "October Proposals"). That filing was approved by the SEC on June 30, 2003.[5]

Following approval of the October Proposals, the NYSE's Listed Company Manual was updated to reflect the approved amendments. During that process, it became apparent to the NYSE that minor clean-up revisions were necessary. The amendments proposed in this filing reflect the need for these revisions. The NYSE proposes to revise Section 312.03(a) to clarify that the section applies to equity-compensation plans, and to include a cross-reference to section 303A.08. The NYSE proposes to clarify through these proposed amendments that shareholder approval is also required for equity-compensation plans under section 312.03, its shareholder approval policy. The NYSE also proposes to delete a provision of section 303.00 that was duplicated in different formats in both the October Proposals and the Corporate Governance Proposals. The format approved in the Corporate Governance Proposals will be retained in section 303.00.

In addition, the NYSE proposes to delete two paragraphs in section 303A.08 that relate to broker voting. These paragraphs relate to amendments approved to NYSE Rule 452 regarding broker voting and were inadvertently included in the rule text relating to equity-compensation plans, rather than in NYSE Rule 452 itself. One of these paragraphs relates to a 90-day transition period regarding a prohibition on broker voting on equity-compensation plans, which expired as of September 29, 2003. The other paragraph relates to the NYSE's intention to establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the requirement that brokers may not vote on equity-compensation plans presented to shareholders without instructions from the beneficial owners. Since September 29, 2003, the date the rule change went into effect, the working group has been monitoring stockholder meetings of companies at which equity-compensation plans were subject to shareholder approval. The NYSE represents that there have been 65 such situations to date. To the NYSE's knowledge, only one equity-compensation plan failed to receive shareholder approval; that plan also would have required that brokers not vote under the former rule due to the fact that the number of shares reserved for the plan exceeded 5% of the company's outstanding shares. The NYSE has also solicited feedback from Automatic Data Processing, Inc. ("ADP") and the proxy solicitor community on whether difficulties were being encountered with respect to the amended rule. No problems were reported for listed companies. In addition, the NYSE represents that the working group has not received any complaints directly from listed companies following effectiveness of the amended rule. The NYSE further represents that the working group will continue to monitor this issue throughout the 2004 proxy season.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the NYSE's original 19b–4 filing in its entirety.

[4] *See* File No. SR–NYSE–2002–33. This filing was approved on November 4, 2003. *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

[5] *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (SR–NYSE–2002–46).

[6] The Commission notes that the paragraph on the working group that the NYSE is proposing to delete only refers to the intention to establish a working group.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NYSE–2003–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–31 and should be submitted by March 11, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the NYSE's proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[9] Specifically, the Commission finds that approval of the NYSE's proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[10] in that it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed clarification to section 312.03(a) of the NYSE's Listed Company Manual ("Shareholder Approval") to explicitly state that shareholder approval is required under that section for equity-compensation plans, in addition to the equity-compensation plan shareholder approval requirements set out in section 303A.08 of the NYSE's Listed Company Manual ("Shareholder Approval of Equity Compensation Plans"), should help to explicitly clarify that shareholder approval is required for equity-compensation plans pursuant to section 312.03, its shareholder approval policy. Furthermore, the Commission believes that the cross-reference in section 312.03(a) to the section 303A.08 shareholder approval requirements for equity-compensation plans should provide companies with further guidance as to the shareholder approval requirements for such plans.

Moreover, the Commission believes that it is appropriate for the NYSE to delete the two paragraphs under section 303A.08, which relate to broker voting. The Commission notes these two paragraphs, which apply to NYSE members, should have been incorporated into NYSE Rule 452 ("Giving Proxies by Member Organization") instead of section 303A.08, which applies to NYSE-listed companies. The Commission further notes that the paragraph regarding a 90-day transition period for the implementation of amendments to NYSE Rule 452 restricting broker voting on equity compensation plans is no longer necessary because the 90-day transition period expired on September 29, 2003. Therefore, the Commission agrees with the NYSE that this rule language is no longer necessary. In addition, the Commission believes that it is appropriate for the NYSE to delete the paragraph concerning the working group because it only refers to the NYSE's intention to establish a working group to advise on, and to facilitate, the implementation of the new broker voting prohibition for equity-compensation plans. In its filing, the NYSE stated that it established the working group, which has been monitoring the implementation of the amendment to NYSE Rule 452 since it became effective on September 29, 2003. In addition, the NYSE has represented that the working group will continue to monitor this issue during the 2004 proxy season.

Finally, the Commission believes that the NYSE's proposed deletion of a duplicative provision in section 303.00 of the NYSE's Listed Company Manual ("Corporate Governance Standards") should eliminate any confusion and provide clarity as to the rule requirements.

The Commission finds good cause for approving the NYSE's proposal and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The NYSE has requested accelerated approval of this proposal, as amended, because it believes that the proposed amendments are non-controversial in nature and reflect minor clean-up revisions of rule text following the Commission's approval of section 303A.08. The proposal makes minor clean-up changes to sections 303.00, 303A.08, and 312.03 of the NYSE's Listed Company Manual. The Commission believes that accelerated approval of these minor clean-up revisions should help to facilitate the updating and accuracy of the NYSE's rules and Listed Company Manual and avoid confusion about outdated provisions. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[11] to approve the NYSE's proposal and Amendment No. 1 on an accelerated basis.

[9] 15 U.S.C. 78f(b). In approving the NYSE's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2003–31) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3542 Filed 2–18–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4591]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW., Washington, DC, March 8–9, 2004, in Conference Room 1107. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) no later than February 20, 2004 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Gloria Walker for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, March 8, 2004, in Room 1107 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, March 8, 2004, and 9 a.m. until 1 p.m. on Tuesday, March 9, 2004, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: February 5, 2004.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. 04–3601 Filed 2–18–04; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 6, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17031.

Date Filed: February 3, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1121 dated 6 February 2004, Mail Vote 349—Resolution 011a (Amending), Mileage Manual Non-TC Member/Non-IATA Carrier Sectors.

Intended Effective Date: 16 February 2004, (for implementation 1 April 2004).

Docket Number: OST–2004–17050.

Date Filed: February 4, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC12 SATL–EUR 0118 dated 6 February 2004, South Atlantic-Europe Expedited Resolution 002s r1.

Intended Effective Date: 15 March 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–3617 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending February 6, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4660.

Date Filed: February 4, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 2004.

Description: Application of Continental Micronesia, Inc., requesting renewal of its certificate of public convenience and necessity for its Route 171, Segment 7 authority to provide scheduled foreign air transportation of persons, property, and mail between Guam and Saipan, Commonwealth of the Northern Mariana Islands, on the one hand, and Naha, Japan, on the other hand. Continental Micronesia also requests, renewal of the right to combine this authority with its authority in other markets to the extent permitted by applicable bilateral agreements.

Docket Number: OST–1999–5002.

Date Filed: February 4, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 2004.

Description: Application of Continental Micronesia, Inc., requesting renewal of its certificate of public convenience and necessity for its Route 171, Segment 14 authority to provide scheduled foreign air transportation of persons, property, and mail between Guam and Saipan, Commonwealth of the Northern Mariana Islands, on the one hand, and Osaka, Japan, on the other hand. Continental Micronesia also requests, renewal of the right to combine this authority with its authority in other markets to the extent permitted by applicable bilateral agreements.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Docket Number: OST–2004–17064.
Date Filed: February 6, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 27, 2004.
Description: Application of Varig Logistica S.A. d/b/a Varig Log, requesting a foreign air carrier permit to provide scheduled foreign air transportation of property and mail on any and all routes authorized pursuant to the Agreement between the Government of the United States of America and the Government of the Federative Republic of Brazil on Air Transport.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. 04–3616 Filed 2–18–04; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23.1419–2C, Certification of Part 23 Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to AC 23.1419–2C. This proposed revision adds guidance for showing compliance to § 23.1419(a), in particular the part 23, Subpart B requirements introduced at Amendment 23–43. Proposed guidance is added for fluid ice protection systems, primary ice detection systems, ice protection of air data systems, failure analyses of ice protection systems, and modifications to airplanes certificated for flight in icing. The format is also changed to improve readability of the document.

DATES: Comments must be received on or before April 19, 2004.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations and Policy (ACE–111), 901 Locust Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pellicano, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (770) 703–6064, fax (816) 329–4090.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. A copy of the proposed AC will also be available on the Internet at *http://www.airweb.faa.gov/AC* within a few days.

Comments Invited: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23.1419–2C and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: When issued, AC 23.1419–2C Certification of Part 23 Airplanes for Flight in Icing Conditions will replace AC 23.1419–2B, Certification of Part 23 Airplanes for Flight in Icing Conditions, dated September 26, 2002.

The listed means of compliance have been found acceptable and historically successful, but they are not the only methods that can be used to show compliance. In some cases, highly sophisticated airplanes may require more accurate or substantial solutions. Accordingly, the FAA is proposing and requesting comments on AC 23.1419–2C.

Issued in Kansas City, Missouri on February 6, 2004.

Dorenda D. Baker,
Manager, Small Airplane Directorate, Aircraft Certification Office.
[FR Doc. 04–3628 Filed 2–18–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Craig Field Airport, Selma, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Craig Field Airport and Industrial Authority to waive the requirement that a 29.44-acre parcel of surplus property, located at the Craig Field Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before March 22, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Menzo W. Driskell, Executive Director of the Craig Field Airport and Industrial Authority at the following address: Craig Field and Industrial Authority, 48 Fifth Street, Craig Industrial Park, Selma, AL 36701.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Craig Field Airport and Industrial Authority to release 29.44 acres of surplus property at the Craig Field Airport. The property will be purchased by Lear Corporation, which is a Tier 1 automotive parts supplier to the Hyundai Motor Corporation located near Hope Hull, AL. The property land use is currently agricultural. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the city of Selma.

Issued in Jackson, Mississippi on February 11, 2004.

Rans D. Black,
Manager, Jackson Airports District Office, Southern Region.
[FR Doc. 04–3636 Filed 2–18–04; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Georgetown Municipal Airport, Georgetown, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Georgetown for the Georgetown Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Blackford, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650. Telephone: (817) 222–5607.

Mr. Travis McLain, P.O. Box 409, Georgetown, Texas 78627. (512) 930–3666.

Ms. Michelle Hannah, Texas Department of Transportation, Aviation Division, 125 East 11th Street, Austin, Texas 78701–2483. (512) 416–4500.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Georgetown Municipal Airport are in compliance with applicable requirements of part 150, effective January 26, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the city of Georgetown. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes: Exhibits 1, 2, 3A, 3E–3G, and Tracks 4A, 4B, 4D and 4E. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 26, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; City of Georgetown, P.O. Box 409, Georgetown, Texas. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, January 26, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–3634 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–16227]

Policy and Procedures Concerning the Use of Airport Revenue: Petition of Sarasota-Manatee Airport Authority To Allow Use of Airport Revenue for Direct Subsidy of Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of extension of comment period.

SUMMARY: On November 5, 2003, the FAA published a notice in the **Federal Register** (68 FR 62651) seeking comments from interested parties on the petition of Sarasota-Manatee Airport Authority to allow use of airport revenue for direct subsidy of air carrier operations (Petition). The petitioner Sarasota-Manatee Airport Authority is an airport operator subject to the provisions of the Revenue Use Policy. The petitioner requests that the FAA amend the Revenue Use Policy to permit certain airport operators to use airport revenue for the direct subsidy of commercial airline operations under specific and limited circumstances. The original comment period closed on January 5, 2004. To allow the public more time to comment on the proposal contained in the Petition, the FAA is extending the comment period to March 5, 2004.

DATES: Comments must be received by March 5, 2004.

ADDRESSES: The proposed policy amendment is available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The documents have been filed under FAA Docket Number FAA–2003–16227. The Dockets Office is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets

Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you, may review public dockets on the Internet at *http://dms.dot.gov.* Comments on the proposed policy must be delivered or mailed, in duplicate, to: the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number "FAA Docket No FAA–2003–16227" at the beginning of your comments. Commenters wishing FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–16227." The postcard will be date stamped and mailed to the commenter. You may also submit comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: David Cushing, Airports Compliance Division, Office of Airport Safety and Standards, AAS–400, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–8348.

Issued in Washington, DC, on February 11, 2004.

David L. Bennett,

Director, Airport Safety and Standards.

[FR Doc. 04–3635 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on March 16, 2004, 8:30 a.m. PST.

ADDRESSES: The meeting will be held at the Las Vegas Convention Center, Room N–107, 3150 Paradise Road, Las Vegas, NV, 89109, telephone (702) 892–0711.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8199, e-mail *caren.centorelli@faa.gov.*

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

- Working Group Status Reports.
- Fatigue Tolerance Evaluation of Metallic Structures.
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure.
- FAA Status Report.
- Performance and Handling Qualities Requirements Notice of Proposed Rulemaking.
- Critical Parts Advisory Circular Material Package.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting.

There will be no voting on tasks at this meeting. Thirty days after the meeting, minutes will be available on the FAA Web site at *http://www2.faa.gov/avr/arm/arac/aracRotorcraft.cfm?nav=6.*

If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 10, 2004.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–3499 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2004–17120]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the intention of the Information Collection Request (ICR) for extension of the currently approved information collection. The **Federal Register** notice with a 60-day comment period soliciting comments was published on October 15, 2003.

DATES: Comments must be submitted before March 22, 2004. A comment to OMB is most effective if OMB receives it within 39 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Pre-Award and Post-Delivery Review Requirements Under Buy America (*OMB Number: 2132–0544*).

Abstract: Under the Federal Transit Laws, at 49 U.S.C. 5323(l), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. FTA regulation 49 CFR Part 663 implements this law by specifying the actual certificates that must be submitted by each bidder to assure compliance with the Buy America, contract specification, and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(l).

Estimated Total Annual Burden: 2,786 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: February 11, 2004.

Rita L. Wells,

Associate Administrator for Administration.

[FR Doc. 04–3637 Filed 2–18–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–27–91]

Proposed Collection; Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Wednesday, February 11, 2004 (68 FR 6722). This notice relates to a comment request on proposed and/or continuing information collections, Procedural Rules for Excise Taxes Currently Reportable on Form 720.

FOR FURTHER INFORMATION CONTACT: Carol Savage (202) 622–3945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of this correction is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for Form 720 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Form 720, which was the subject of FR Doc. 04–2976, is corrected as follows:

1. On page 6722, column 2, in the heading, the language, "PS–27–97" is corrected to read "PS–27–91"

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 04–3548 Filed 2–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–1 and REG–108639–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–1, Nondiscrimination Testing, and an existing notice of proposed rulemaking, REG–108639–99, Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (§§ 401(k) and 401(m)).

DATES: Written comments should be received on or before April 19, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice and regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination Testing (Notice 98–1) and Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (REG–108639–99).

OMB Number: 1545–1579.

Notice Number: Notice 98–1.

Regulation Project Number: REG–108639–99.

Abstract: Notice 98–1 and REG–108639–99 provides guidance for discrimination testing under section 401(k) and (m) of the Internal Revenue Code as amended by section 1433(c) and (d) of the Small Business Job Protection Act of 1996. The guidance is directed to employers maintaining retirement plans subject to these Code sections.

Current Actions: There are no changes being made to the notice and regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 147,000.

Estimated Time Per Respondent: 20 min.

Estimated Total Annual Burden Hours: 49,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3611 Filed 2–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6497

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6497, Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

DATES: Written comments should be received on or before April 19, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

OMB Number: 1545–0232.

Form Number: Form 6497.

Abstract: Section 605D of the Internal Code requires an information return to be made by any person who administers a Federal, state, or local program providing nontaxable grants or subsidized energy financing. Form 6497 is used for making the information return. The IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grants or subsidized financing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Federal, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 3 hours, 44 minutes.

Estimated Total Annual Burden Hours: 933.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3612 Filed 2–18–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
February 19, 2004

Part II

Securities and Exchange Commission

17 CFR Parts 239, 240, 274

Disclosure Regarding Approval of Investment Advisory Contracts By Directors of Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, and 274

[Release Nos. 33–8364; 34–49219; IC–26350; File No. S7–08–04]

RIN 3235–AJ10

Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the disclosure provided by registered management investment companies about how their boards of directors evaluate and approve, and recommend shareholder approval of, investment advisory contracts. The proposed amendments would require a registered management investment company to provide disclosure in its reports to shareholders regarding the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of advisory contracts during the reporting period. The proposals also are designed to encourage improved disclosure in the registration statements of registered management investment companies regarding the basis for the board's approval of existing advisory contracts, and in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract.

DATES: Comments must be received on or before April 26, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–08–04; this file number should be included in the subject line if electronic mail is used. All comments received will be posted on the Commission's Internet Web site (http://www.sec.gov) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[1]

FOR FURTHER INFORMATION CONTACT: Deborah D. Skeens, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Schedule 14A,[2] the schedule used by registered investment companies and issuers registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act")[3] for proxy statements pursuant to section 14(a) of the Exchange Act, and Forms N–1A,[4] N–2,[5] and N–3,[6] registration forms used by management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act")[7] and to offer their securities under the Securities Act of 1933 ("Securities Act").[8]

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I. Background

Unlike most business organizations, registered management investment companies ("funds")[9] are typically organized by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is organized as a corporation, whose shareholders may have an interest in the fund that is quite different from the interests of the fund's shareholders. One of the key areas where the interests of fund shareholders and shareholders of the investment adviser diverge is fees. While fund shareholders ordinarily prefer lower fees to achieve greater returns, shareholders of the fund's investment adviser often want to maximize profits through higher fees.

The Investment Company Act relies on fund boards of directors to police conflicts of interest, including conflicts with respect to fees to be received by investment advisers. Section 15(a) makes it unlawful for any person to serve as an investment adviser to a fund, except pursuant to a written contract that has been approved by a majority vote of the fund's shareholders and that continues in effect for not more than two years, unless its continuance is approved at least annually by the board of directors or a majority vote of the shareholders.[10] In addition, Section 15(c) requires that the terms of any advisory contract, and any renewal thereof, be approved by a vote of the majority of the disinterested directors.[11] Section 15(c) also requires a fund's directors to request and evaluate, and an investment adviser to a fund to furnish, such information as may reasonably be necessary to evaluate the terms of any advisory contract.[12] As part of their fiduciary duties with respect to fund fees, boards of directors are required to evaluate the material factors applicable to a decision to approve an investment advisory contract.[13]

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from hard copy or electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 240.14a–101.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 239.15A and 274.11A.

[5] 17 CFR 239.14 and 274.11a–1.

[6] 17 CFR 239.17a and 274.11b.

[7] 15 U.S.C. 80a–1 *et seq.*

[8] 15 U.S.C. 77a *et seq.*

[9] Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* Section 5 of the Investment Company Act [15 U.S.C. 80a–5]. Open-end companies generally offer and sell new shares to the public on a continuous basis. Closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and, in most cases, do not offer their shares to the public on a continuous basis.

[10] 15 U.S.C. 80a—15(a).

[11] We refer to directors who are not "interested persons" of the fund as "independent directors" or "disinterested directors." The term "interested person" is defined in Section 2(a)(19) [15 U.S.C. 80a–2(a)(19)] of the Investment Company Act.

[12] 15 U.S.C. 80a–15(c). We recently proposed amendments to rule 31a–2, the fund recordkeeping rule, that would require funds to retain copies of the written materials that directors consider in approving an advisory contract under section 15 of the Investment Company Act. *See* Investment Company Act Release No. 26323 (Jan. 15, 2004) [69 FR 3472, 3477 (Jan. 23, 2004)].

[13] *See, e.g., Burks* v. *Lasker*, 441 U.S. 471, 483 (1979) ("Congress consciously chose to address the conflict-of-interest problem through the [Investment Company] Act's independent-directors section."); *Brown* v. *Bullock*, 194 F. Supp. 207 (S.D.N.Y.), *aff'd*, 294 F.2d 415 (2nd Cir. 1961) ("By giving the

Since 1994, we have required fund proxy statements seeking approval of an investment advisory contract to include a discussion of the material factors that form the basis of the fund board's recommendation that shareholders approve the contract.[14] In 2001, as part of an initiative intended to enhance the independence and effectiveness of fund boards, we adopted amendments requiring a fund to provide similar disclosure in its Statement of Additional Information ("SAI")[15] regarding the basis for the board's approval of an existing investment advisory contract.[16] This requirement was intended to provide shareholders with specific information on how directors evaluate and approve investment advisory contracts, including, in particular, the fees paid by the fund to the adviser.

Recently, concerns have been raised regarding the adequacy of review of advisory contracts and management fees by fund boards. In particular, the level of fees charged by investment advisers to mutual fund clients, especially in comparison to those charged by the same advisers to pension plans and other institutional clients, has come under scrutiny.[17] Some have argued that advisory fees charged by investment advisers for equity pension funds are substantially lower than advisory fees charged by investment advisers for equity mutual funds because advisory fees for pension funds are negotiated through arm's-length bargaining.[18] Some have also argued that the process by which fund boards determine to renew advisory contracts is often cursory, at best.[19]

The Commission recently proposed amendments to the fund recordkeeping rule to require that funds retain copies of the written materials that directors considered in approving an advisory contract.[20] This recordkeeping requirement will facilitate our compliance examiners' review of whether directors are obtaining the necessary information to make an informed assessment of the advisory contract. The Commission has also proposed measures to enhance the independence of fund boards of directors by requiring funds that rely on certain exemptive rules to increase the percentage of their independent directors from a majority to 75 percent and requiring that these boards be led by a chairman who is an independent director.[21] A fund board may be more effective when negotiating with the fund adviser over matters such as the advisory fee when the board is composed of a super-majority of independent directors and led by an independent chairman.

Today we are taking steps to encourage fair and reasonable fund fees through increased transparency. Increased transparency with respect to investment advisory contracts, and fees paid for advisory services, will assist investors in making informed choices among funds and encourage fund boards to engage in vigorous and independent oversight of advisory contracts.[22] The Commission is proposing enhanced disclosure regarding the board's basis for approving, or recommending that shareholders approve, investment advisory contracts. These proposals are intended to provide existing fund shareholders with more timely information about the basis for the board's approval of any investment advisory contract. In addition, the proposals are designed to reinforce the existing obligation of a fund to provide meaningful disclosure in the SAI and proxy statements about the basis for the board's approval of the fund's existing advisory contract and any board recommendation that shareholders approve an advisory contract. We have previously reminded funds that "boilerplate" disclosure is not appropriate, but we remain concerned that some funds do not provide adequate specificity regarding the board's basis for its decision.[23]

Today's proposal is one step in a larger series of Commission rulemaking initiatives that have sought to improve disclosure to investors concerning fund fees and charges. The Commission is adopting rules that will require mutual funds to include in shareholder reports information regarding the dollar amount of expenses paid by investors on an ongoing basis for investing in the fund. The Commission also recently adopted amendments requiring investment company advertisements to highlight the availability and importance of information on fees and charges found in the prospectus[24] and has proposed amendments to the mutual fund prospectus that would require enhanced disclosure regarding breakpoint discounts on front-end sales loads.[25] In addition, the Commission published a concept release seeking views regarding

directors the right to extend and terminate the [investment advisory] contract, the Act necessarily also imposes upon the directors the fiduciary duty to use these powers intelligently, diligently and solely for the interests of the company and its stockholders.").

[14] Item 22(c)(11) of Schedule 14A. *See* Investment Company Act Release No. 20614 (Oct. 13, 1994) [59 FR 52689 (Oct. 19, 1994)] (adopting amendments to Schedule 14A).

[15] The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").

[16] Item 13(b)(10) of Form N–1A (registration statement for open-end management investment companies); Item 18.13 of Form N–2 (registration statement for closed-end management investment companies); Item 20(l) of Form N–3 (registration statement for separate accounts organized as management investment companies that offer variable annuity contracts); Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734, 3744 (Jan. 16, 2001)] (adopting requirement for disclosure in SAI of basis for board's approval of advisory contract).

[17] *See, e.g.*, Carla Fried, *Pressure Builds to Cut Fund Fees*, The New York Times, Jan. 11, 2004, at sec. 3, p. 26 (discussing continuing concern among federal and state regulators over level of fund advisory fees); Yuka Hayashi and Tom Lauricella, *Fund Report Disputes Critics' Study—Trade Group Rebuts Figures Cited by New York's Spitzer on High Management Fees*, The Wall Street Journal, Jan. 7, 2004, at D9 (discussing debate over whether mutual fund investors pay significantly higher fees than pension funds and other large investors for similar money-management services). *See also* Testimony of John C. Bogle, *Oversight Hearing on the Mutual Fund and Investment Advisory Industry Before the U.S. Senate Governmental Affairs Committee, Subcommittee on Financial Management*, 108th Cong., 1st. Sess. (November 3, 2003) ("If the management fees that represent the major portion of [fund] costs were subject to arm's length negotiation between funds and their managers, it is true that tens of billions of dollars could be saved and added to investor returns year after year after year.")

[18] John P. Freeman and Stewart L. Brown, *Mutual Fund Advisory Fees: The Cost of Conflicts of Interest*, 26 Iowa Journal of Corporation Law 609, 634 (Spring 2001) ("Freeman/Brown Study"). *But see* Sean Collins, *The Expenses of Defined Benefit Pension Plans and Mutual Funds*, Investment Company Institute Perspective (December 2003), *available at http://www.ici.org/pdf/per12–03.pdf* (arguing that Freeman/Brown Study failed to take into account significant differences in organizational structure and expense structure between mutual funds and equity pension funds).

[19] *See, e.g., Special Report: Perils in the Savings Pool—Mutual Funds*, The Economist, Nov. 8, 2003, at 65 (arguing that fund boards tend to "rubber-stamp" their advisers' contracts without question); Testimony of Gary Gensler, *Hearing before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises*, 108th Cong., 1st Sess. (Mar. 12, 2003) (arguing that "mutual fund boards fire their advisers with about the same frequency that race horses fire their jockeys").

[20] *See* Investment Company Act Release No. 26323 (Jan. 15, 2004) [69 FR 3472 (Jan 23, 2004)].

[21] *Id.*

[22] *See Statement of the Commission Regarding the Enforcement Action Against Alliance Capital Management, L.P.*, SEC Press Release 2003–176 (Dec. 18, 2003) *http://www.sec.gov/news/press/2003–176.htm* (stating Commission's view that the best way to ensure fair and reasonable fees "is a marketplace of vigorous, independent, and diligent mutual fund boards coupled with fully-informed investors who are armed with complete, easy-to-digest disclosure about the fees paid and the services rendered").

[23] *See* Investment Company Act Release No. 24816, *supra* note, 66 FR at 3744.

[24] *See* Investment Company Act Release No. 26195 (Sept., 29, 2003) [68 FR 57760 (Oct. 6, 2003)].

[25] *See* Investment Company Act Release No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)].

improving disclosure of transaction costs.[26] Finally, the Commission recently proposed new rules that would require broker-dealers to provide their customers with targeted information, at the point of sale and in transaction confirmations, regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares.[27] Together, these initiatives are intended to enhance significantly the information that fund investors receive about fees and charges.

II. Discussion

The Commission is proposing amendments to Forms N–1A, N–2, and N–3[28] that would require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect thereto that formed the basis for the board of directors' approval of any investment advisory contract.[29] This requirement would apply to shareholder reports of open- and closed-end management investment companies and insurance company managed separate accounts that offer variable annuities. The required disclosure would be similar to disclosure currently required in the SAI and fund proxy statements about the basis for the approval of the fund's existing advisory contract and any board recommendation that shareholders approve an advisory contract. The shareholder reports disclosure would be required for any new investment advisory contract or contract renewal, including subadvisory contracts, approved during the semi-annual period covered by the report, other than a contract that was approved by shareholders.[30] In the case of contracts approved by shareholders, a fund is already required to provide similar disclosure in a proxy statement.[31]

Our proposal is intended to provide existing fund shareholders with more timely disclosure of the reasons for the board's approval of an investment advisory contract. We believe that the visibility of this disclosure, alongside other current information about a fund, such as investment performance and current period dollars and cents expense disclosure,[32] may encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract. This, in turn, may encourage fund boards to consider investment advisory contracts more carefully and investors to consider more carefully the costs and value of the services rendered by the fund's investment adviser.

Our proposals would result in parallel disclosure requirements in fund shareholder reports, the SAI, and fund proxy statements. The proposed disclosure requirement in shareholder reports would provide existing shareholders information about any board approval of an investment advisory contract during the period covered by the report, other than a contract that was approved by shareholders. The existing requirement in proxy statements, which applies to any recommendation that shareholders approve an investment advisory contract, complements this shareholder reports disclosure. Finally, the existing SAI requirement provides prospective investors information about board approval of any existing investment advisory contract.

We are proposing several enhancements to the existing SAI and proxy statement disclosure requirements and are proposing that these same enhancements be included in the new shareholder reports disclosure requirement. These enhancements would clarify and reinforce a fund's obligation under the existing disclosure requirements to discuss the material factors and the conclusions with respect thereto that formed the board's basis for approving, or recommending that the shareholders approve, an advisory contract. They are intended to address our concerns that some funds do not provide adequate specificity regarding the board's basis for its decision. Specifically, our proposal would require a fund to discuss the following in its shareholder reports, in its SAI, and in relevant proxy statements.

Selection of Adviser and Approval of Advisory Fee. The proposed amendments would clarify that the fund's discussion should include factors relating to both the board's selection of the investment adviser, and its approval of the advisory fee and any other amounts to be paid under the advisory contract.[33]

Specific Factors. The fund would be required to include a discussion including, but not limited to, the following: (1) The nature, extent, and quality of the services to be provided by the investment adviser; (2) the investment performance of the fund and the investment adviser; (3) the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the fund; (4) the extent to which economies of scale would be realized as the fund grows; and (5) whether fee levels reflect these economies of scale for the benefit of fund investors.[34]

Comparison of Fees and Services Provided by Adviser. The fund's discussion would be required to indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other

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[26] *See* Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)].

[27] *See* Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)].

[28] Open-end management investment companies use Form N–1A to register under the Investment Company Act and to offer their shares under the Securities Act. Closed-end management investment companies use Form N–2, and insurance company managed separate accounts that offer variable annuities use Form N–3.

[29] Proposed Item 21(d)(6) of Form N–1A; proposed Instruction 6.e. to Item 23 of Form N–2; proposed Instruction 6(v) to Item 27(a) of Form N–3. The proposed amendments to Form N–1A reflect amendments that the Commission is adopting to the requirements for fund shareholder reports that renumber Item 13 (Management) and Item 22 (Financial Statements) of Form N–1A as Items 12 and 21, respectively. The amendments that the Commission is adopting also add Item 21(d) to Form N–1A, Instruction 6 to Item 23 to Form N–2, and Instruction 6(v) to Item 27(a) of Form N–3, containing requirements for annual and semi-annual reports to shareholders for each respective registration form.

[30] The disclosure would be required for approvals of subadvisory contracts where shareholder approval of the contract is not required. *See* Investment Company Act Release No. IC–26230 (Oct. 23, 2003) [68 FR 61720 (Oct. 29, 2003)] (proposing rules that would codify exemptive orders issued for "manager of manager" funds that permit such funds to operate without obtaining shareholder approval when the fund's principal investment adviser hires a new subadviser or replaces an existing subadviser).

We are also adding an instruction to the existing disclosure requirements for the SAI, clarifying that these requirements apply to both approvals of new advisory contracts and contract renewals, and to subadvisory contracts. *See* proposed Instruction 1 to Item 12(b)(10) of Form N–1A; proposed Instruction 1 to Item 18.13 of Form N–2; proposed Instruction 1 to Item 20 of Form N–3.

[31] *See* Item 22(c)(11) of Schedule 14A.

[32] The Commission is also publishing a release adopting rules that will require registered open-end management investment companies to include in shareholder reports Management's Discussion of Fund Performance and information regarding the dollar amount of expenses paid by investors on an ongoing basis.

[33] Proposed Items 12(b)(10)(i) and 21(d)(6)(i) of Form N–1A; proposed Item 18.13(a) and proposed Instruction 6.e.(i) to Item 23 of Form N–2; proposed Item 20(l)(i) and proposed Instruction 6(v)(A) to Item 27(a) of Form N–3; proposed Item 22(c)(11)(i) of Schedule 14A.

[34] *Id.* Courts have used similar factors in determining whether directors have met their fiduciary obligations under Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35(b)]. *See, e.g., Gartenberg* v. *Merrill Lynch Asset Management, Inc.*, 694 F.2d 923, 929 (2nd Cir. 1982) (examining several factors, including "the adviser-manager's cost in providing the service, the nature and quality of the service, the extent to which the adviser-manager realizes economies of scale as the fund grows larger, and the volume of orders which must be processed by the manager").

registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion would be required to describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved.[35]

Evaluation of Factors. The existing proxy and SAI requirements state that conclusory statements or a list of factors will not be considered sufficient disclosure, and that a fund's discussion should relate the factors to the specific circumstances of the fund and the investment advisory contract.[36] We are clarifying this by requiring that the fund's discussion state how the board evaluated each factor. For example, it would not be sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its determination that the contract should be approved.[37]

If we adopt the proposed amendments, we would expect to require all fund reports to shareholders, all registration statements and post-effective amendments that are either annual updates to effective registration statements or that add a new series, and all fund proxy statements filed on or after the effective date of the amendments to comply with the proposed amendments.

III. Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release. We request comment specifically on the following issues.

- Would inclusion of the proposed disclosure in reports to shareholders be useful to investors? Should we expand our proposal to require disclosure in shareholder reports with respect to all investment advisory contracts approved by the board during the reporting period, including contracts that were also approved by shareholders? Should disclosure regarding the basis of the board's approval of an advisory contract be required in any additional location (*e.g.*, the prospectus, fund websites)?
- Should disclosure regarding the basis of the board's approval of an existing investment advisory contract continue to be required in the SAI if we adopt the proposed shareholder reports requirement? If we remove the disclosure requirement from the SAI, should we require funds to include a cross-reference in the prospectus or the SAI to the disclosure in shareholder reports?
- Are our proposed enhancements to the existing SAI and proxy statement disclosure requirements, which we are also proposing be included in the new shareholder reports disclosure requirement, appropriate? Will they result in more meaningful disclosure? Will the fact that we have enumerated certain specific matters that should be included in the discussion encourage funds to omit other, equally significant matters from the discussion?
- If a fund's board did not rely upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, should the fund be required to disclose the reasons why the board did not do so?
- Should a fund be required to disclose whether, and if so, how, the board separately assessed amounts to be paid for portfolio management services and amounts to be paid for services other than portfolio management?
- Is there any additional relevant information that we should require funds to disclose? Will any of our proposed disclosure requirements have a chilling effect on boards' consideration of investment advisory contracts?
- What should the compliance date for the amendments be?

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[38] The Commission is submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies"; (2) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (3) "Form N–2—Registration Statement of Closed-End Management Investment Companies"; (4) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; and (5) "Rule 20a–1 under the Investment Company Act, Solicitations of Proxies, Consents, and Authorizations." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Rule 30e–1 (OMB Control No. 3235–0025) was adopted under section 30(e) of the Investment Company Act.[39] Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to section 8(a) of the Investment Company Act[40] and section 5 of the Securities Act.[41] Rule 20a–1 (OMB Control No. 3235–0158) was adopted pursuant to section 20(a) of the Investment Company Act.[42]

We are proposing amendments to the requirements for fund shareholder reports in Forms N–1A, N–2, and N–3 that would require funds to provide disclosure regarding the material factors that formed the basis for the board of directors' approval of an investment advisory contract during the relevant reporting period. The additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act. In addition, we are proposing amendments to Forms N–1A, N–2, and N–3 that would clarify and reinforce funds' existing obligation to provide disclosure in the SAI of these forms regarding the board's basis for approving any existing investment advisory contract. Finally, we are proposing amendments to Schedule 14A that would clarify and reinforce funds' existing obligation to provide disclosure in proxy statements of the board of directors' basis for a recommendation

[35] Proposed Items 12(b)(10)(i) and 21(d)(6)(i) of Form N–1A; proposed Item 18.13(a) and proposed Instruction 6.e.(i) to Item 23 of Form N–2; proposed Item 20(l)(i) and proposed Instruction 6(v)(A) to Item 27(a) of Form N–3; proposed Item 22(c)(11)(i) of Schedule 14A.

[36] *See* Instruction to Item 13(b)(10) of Form N–1A; Instruction to Item 18.13 of Form N–2; Instruction to Item 20(l) of Form N–3; Instruction to Item 22(c)(11) of Schedule 14A.

[37] Proposed Instruction 2 to Item 12(b)(10) and proposed Instruction 2 to Item 21(d)(6) of Form N–1A; proposed Instruction 2 to Item 18.13 and proposed Instruction 6.f. to Item 23 of Form N–2; proposed Instruction 2 to Item 20(l) and proposed Instruction 6(vi) to Item 27(a) of Form N–3; proposed Instruction to Item 22(c)(11) of Schedule 14A.

[38] 44 U.S.C. 3501, *et seq.*

[39] 15 U.S.C. 80a–29(e).

[40] 15 U.S.C. 80a–8(a).

[41] 15 U.S.C. 77e.

[42] 15 U.S.C. 80a–20(a).

that shareholders approve an investment advisory contract.

Shareholder Reports

Rule 30e–1, which requires funds to include in the shareholder reports the information that is required by the fund's registration statement form including the proposed amendments, contains collection of information requirements.[43] The respondents to this collection of information requirement are funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

We estimate that there are approximately 3,800 funds subject to rule 30e–1. The current approved hour burden for preparing and filing semi-annual or annual shareholder reports in compliance with rule 30e–1 is 143.3 hours per report per fund, or a total of 1,088,984 annual burden hours (143.3 hours per report x 2 reports x 3,800 funds).

We currently estimate that the 3,800 funds filing annual and semi-annual shareholder reports pursuant to rule 30e–1 include 9,706 portfolios, including 8,938 portfolios of open-end management investment companies ("mutual funds") registered on Form N–1A, 733 closed-end funds registered on Form N–2, and 35 sub-accounts of managed separate accounts registered on Form N–3.[44] We estimate that the proposed amendments will increase the estimated burden hours for complying with rule 30e–1 by 2 hours per portfolio annually. Accordingly, if the proposed amendments were adopted, we estimate the total annual hour burden for all funds for complying with rule 30e–1 would be 1,108,396 hours (1,088,984 hours + (9,706 portfolios x 2 hours)).

Forms N–1A, N–2, and N–3

The purpose of Forms N–1A, N–2, and N–3 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to provide investors with information necessary to evaluate an investment in a fund. Forms N–1A, N–2, and N–3 contain collection of information requirements. The likely respondents to the information collection in Form N–1A are open-end funds registering with the Commission. The likely respondents to the information collection in Form N–2 are closed-end funds registering with the Commission on Form N–2. The likely respondents to the information collection in Form N–3 are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Forms N–1A, N–2, and N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The proposed amendments to Forms N–1A, N–2, and N–3 would clarify and reinforce funds' existing obligation to provide disclosure in these forms regarding the board's basis for approving any existing investment advisory contract. Because funds are already required to provide disclosure in appropriate detail regarding the material factors and the conclusions with respect thereto that formed the board's basis for approving an existing investment advisory contract, we estimate that the proposed amendments will not increase the hour burden for filing registration statements on these forms.

Proxy Statements

Rule 20a–1, including the proposed amendments to Schedule 14A, contains collection of information requirements.[45] The respondents to this collection of information requirement include funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 20a–1 is mandatory. Responses to the disclosure requirements are not confidential.

The proposed amendments to Schedule 14A would clarify and reinforce funds' existing obligation to provide disclosure in proxy statements regarding the board's basis for recommending that shareholders approve an investment advisory contract. Because funds are already required to provide disclosure in appropriate detail regarding the material factors and the conclusions with respect thereto that formed the board's basis for recommending shareholder approval of an investment advisory contract, we estimate that the proposed amendments will not increase the hour burden for complying with the requirements of rule 20a–1.

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–08–04. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–08–04, and be submitted to the Securities and Exchange Commission, Office of Filing and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0609. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposals would require funds to improve the disclosure that they provide regarding the fund board's basis for approving, or recommending that shareholders approve, an investment

[43] The amendments are to the shareholder reports requirements in Forms N–1A, N–2, and N–3. Rule 30e–1(a) under the Investment Company Act [17 CFR 270.30e–1(a)] requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

[44] The estimates of the number of mutual fund portfolios registered on Form N–1A and the number of closed-end funds registered on Form N–2 are based on the Commission staff's analysis of reports filed on Form N–SAR in 2003. The estimate of the number of sub-accounts of managed separate accounts registered on Form N–3 is based on the staff's analysis of reports filed on Form N–SAR in 2003.

[45] The proposed amendments are to Item 22 of Schedule 14A. Rule 20a–1 requires funds to comply with Regulation 14A, Schedule 14A, and all other rules and regulations adopted pursuant to section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to section 12 of the Exchange Act. The annual responses to rule 20a–1 reflect the number of proxy and information statements that are filed by funds.

advisory contract. Specifically, the proposals would:

- Require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of an advisory contract during the reporting period;
- Enhance the existing requirement for a fund to provide disclosure in its SAI about the board's basis for approving any investment advisory contract; and
- Enhance the existing requirement for a fund to provide disclosure in a proxy statement seeking approval of an investment advisory contract about the board's basis for its recommendation that shareholders approve the contract.

A. Benefits

The Commission's proposals would improve the disclosure provided by funds about how their boards of directors evaluate and approve, and recommend shareholder approval of, investment advisory contracts. First, the proposals would provide existing fund shareholders with more timely information about the basis for the board's approval of investment advisory contracts. The increased visibility of this disclosure resulting from its inclusion in shareholder reports may encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract. This, in turn, may benefit investors by encouraging them to consider more carefully the costs and value of the services rendered by the fund's investment adviser, and by enabling them to make more informed choices among funds.

In addition, the increased visibility of the proposed disclosure in shareholder reports may encourage fund boards to engage in more vigorous and independent oversight of investment advisory contracts. This increased oversight by fund boards would also benefit investors.

The proposals would also amend the current disclosure requirements in proxy statements and in a fund's SAI. These proposed amendments would clarify and reinforce funds' obligation under the existing disclosure requirements in the SAI and proxy statements to discuss the material factors and the conclusions with respect thereto that formed the basis for the board's approval of the fund's existing advisory contract, or its recommendation that shareholders approve an investment advisory contract. This improved disclosure in proxy statements and in the SAI would also benefit investors.

We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

B. Costs

The proposals would impose new requirements on funds to provide disclosure in their shareholder reports regarding the fund board's basis for approving an investment advisory contract. We estimate that complying with the proposed new disclosure requirements would entail a relatively small financial burden. Funds currently are required to provide similar disclosure in their SAIs and in relevant proxy statements, and the required information regarding a fund board's evaluation of each advisory contract should be readily available to management and to the fund board. Therefore, we expect that the cost of compiling this information should be minimal, and the primary costs attributable to the proposed amendments would be those of reporting this information. These costs may include both internal costs (for attorneys and non-legal staff to prepare and review the required disclosure) and external costs (for printing, and typesetting, and mailing of the disclosure).

For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the annual hour burden for completing a shareholder report in compliance with rule 30e–1 under the Investment Company Act by 19,412 hours. We estimate that this additional burden would equal total internal costs of $1,523,454 annually, or approximately $401 per fund.[46] We have estimated that the proposed amendments to Forms N–1A, N–2, and N–3 will have no impact on the hour burden for filing registration statements on these forms. In addition, we have estimated that the proposed amendments to Schedule 14A will have no impact on the hour burden for complying with rule 20a–1 under the Investment Company Act.

The external costs of providing the enhanced disclosure in fund shareholder reports regarding the process by which a fund board reviews and approves an investment advisory contract are expected to be limited, but would depend on the individual circumstances of each fund and its contractual relationships with its advisers and sub-advisers, and the nature of the process by which the board determines whether to approve the fund's advisory contract. We estimate that the additional disclosure that would be required in shareholder reports may add one additional page to a fund's annual or semi-annual report, at a cost of $0.02 per page.[47] We estimate that there are approximately 257 million fund shareholder accounts which would send out 231 million reports to shareholders annually that would include the required disclosure.[48] Therefore, we estimate that the additional disclosure in shareholder reports will cost approximately $4,620,000 ((231 million shareholder reports x $0.02 per page) in external costs for funds annually.

We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to,

[46] These internal cost estimates are based on a Commission estimate that approximately 3,800 investment companies would be subject to the proposed amendments and an estimated hourly wage rate of $78.48. This estimated wage rate is a blended rate, based on published hourly wage rates for compliance attorneys ($74.22) and programmers ($42.05) in New York City, and the estimate that professional and non-professional staff will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of $58.135 (($74.22 × .50) + ($42.05 × .50)) = $58.135). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001) (for most current rate for compliance attorneys in New York City); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (Sep. 2002) (for most current rate for programmers in New York City). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $78.48 ($58.135 × 1.35 = $78.48).

[47] This cost per page is based on an estimate that the typical shareholder report is approximately 25 pages long and costs $.52 to print and deliver. *See* Securities Act Release No. 33–7766 (Nov. 4, 1999) [64 FR 62540, 62543 (Nov. 16, 1999)].

[48] Investment Company Institute, Mutual Fund Fact Book 65 (43rd ed. 2003), at 63 (estimating approximately 251 million shareholder accounts associated with mutual funds). In addition, we estimate that there are approximately 2 million shareholder accounts associated with closed-end funds registered on Form N–2 and approximately 4 million shareholder accounts associated with managed separate accounts registered on Form N–3. These figures are based on the Commission staff's analysis of reports filed on Form N–SAR in 2003. We estimated the number of shareholder reports by reducing the number of accounts by 10% to reflect an estimated 10% savings in the number of reports that must be delivered to shareholders due to householding rules.

the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Burden on Competition; Promotion of Efficiency Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[49] In addition, section 2(c) of the Investment Company Act,[50] section 2(b) of the Securities Act,[51] and section 3(f) of the Exchange Act[52] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are designed to encourage better, more visible, and more timely disclosure to fund shareholders about the material factors, and the conclusions with respect to those factors, that formed the basis for the decision of a fund's board of directors to approve or renew an investment advisory contract, or to recommend approval of an investment advisory contract. These amendments may thereby improve efficiency. By increasing transparency with respect to advisory fees, the proposed amendments may assist investors in making informed choices among funds and encourage fund boards to engage in vigorous and independent oversight of advisory contracts, which may promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. These proposals may also improve competition, as enhanced transparency regarding the board's basis for approving an investment advisory contract may encourage investors to consider more carefully the costs and value of the services rendered by the fund's investment adviser. Finally, the proposed amendments have no effect on capital formation.

As noted above, we believe that the proposed amendments would benefit investors. We note that funds currently are required to provide similar disclosure in their SAIs and in relevant proxy statements. We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on any anti-competitive effects of the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with section 3(a) of the Regulatory Flexibility Act.[53] It relates to the Commission's proposed rule and form amendments to Schedule 14A under the Exchange Act and to Forms N–1A, N–2, and N–3 under the Investment Company Act.

A. Reasons for, and Objectives of, Proposed Amendments

Section I of this Release describes the background and reasons for the proposed form amendments. Section II of this Release discusses the objectives of the proposed form amendments. As we discuss in detail above, these proposals are designed to increase the transparency of the information that a fund provides regarding the board's basis for approving an investment advisory contract, or recommending that shareholders approve an investment advisory contract.

B. Legal Basis

The Commission is proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act[54] and sections 20(a) and 38 of the Investment Company Act.[55] The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act[56] and sections 8, 15, 24(a), 30, and 38 of the Investment Company Act.[57]

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[58] Approximately 145 investment companies registered on Form N–1A meet this definition, and approximately 70 investment companies registered on Form N–2 meet this definition.[59] We estimate that few, if any, registered separate accounts registered on Form N–3 are small entities.[60]

D. Reporting, Recordkeeping, and Other Compliance Requirements

As described above, the proposals would:

- Require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect to these factors that formed the basis for the board's approval of an advisory contract during the relevant reporting period;
- Enhance the existing requirements for a fund to provide disclosure in its SAI about the board's basis for approving any existing investment advisory contract; and
- Enhance the existing requirements for a fund to provide disclosure in a proxy statement seeking approval of an investment advisory contract about the board's basis for its recommendation that shareholders approve the contract.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, including funds that are small entities. These include the costs related to providing this disclosure in shareholder reports. These costs also could include expenses for legal fees. We note, with respect to the proposed amendments to the disclosure requirements in the SAI and proxy statements, that these proposals would clarify and reinforce funds' obligation under the existing disclosure requirements to discuss the board's basis for approving, or recommending shareholder approval of, any existing investment advisory contract. Therefore, we expect that the cost of compliance with the proposed amendments to the existing disclosure requirements in the SAI and proxy statements should be minimal. We believe the benefits that will result to shareholders through

[49] 15 U.S.C. 78w(a)(2).
[50] 15 U.S.C. 80a–2(c).
[51] 15 U.S.C. 77(b).
[52] 15 U.S.C. 78c(f).
[53] 5 U.S.C. 603.
[54] 15 U.S.C. 78n and 78w(a)(1).
[55] 15 U.S.C. 80a–20, 80a–37.
[56] 15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a).
[57] 15 U.S.C. 80a–8, 80a–15, 80a–24(a), 80a–29, and 80a–37.
[58] 17 CFR 270.0–10.
[59] This estimate is based on an analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.
[60] This estimate is based on figures compiled by Division of Investment Management staff regarding separate accounts registered on Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

better information with respect to their fund board's evaluation of such advisory contracts justify these potential costs.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small registrants. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed amendments would provide shareholders with greater transparency regarding the fund board's basis for approving an investment advisory contract, or recommending that shareholders approve an investment advisory contract. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would be less able to consider the costs and value of the services rendered by the fund's investment adviser, and less able to make informed choices among funds. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Based on our past experience, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–08–04; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102, and also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[61]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[62] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act[63] and sections 20(a) and 38 of the Investment Company Act.[64] The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act[65] and sections 8, 15, 24(a), 30, and 38 of the Investment Company Act.[66]

List of Subjects

17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 77sss, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n,

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[61] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[62] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

[63] 15 U.S.C. 78n and 78w(a)(1).

[64] 15 U.S.C. 80a–20, 80a–37.

[65] 15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a).

[66] 15 U.S.C. 80a–8, 80a–15, 80a–24(a), 80a–29, and 80a–37.

78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

3. Section 240.14a–101 is amended by revising paragraph (c)(11) of Item 22 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(c) * * *

(11) Discuss in reasonable detail the material factors and the conclusions with respect thereto that form the basis for the recommendation of the board of directors that the shareholders approve an investment advisory contract. The discussion should include:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in determining to recommend that the shareholders approve the advisory contract; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract for which approval is sought and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its determination to recommend approval of the contract.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

5. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising Item 12(b)(10); and

b. Adding new Item 21(d)(6).

The revision and addition read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 12. Management of the Fund

* * * * *

(b) * * *

(10) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving any existing investment advisory contract. The discussion should include:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instructions

1. Board approvals covered by this item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

Item 21. Financial Statements

* * * * *

(d) * * *

(6) *Statement Regarding Basis for Approval of Investment Advisory Contract.* If the board of directors approved any investment advisory contract during the period covered by the report, other than a contract that was approved by shareholders during the period, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. The discussion should include:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the

investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instructions

1. Board approvals covered by this item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

* * * * *

6. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. Revising Item 18.13; and

b. Adding new Instructions 6.e and 6.f to Item 23.

The revision and additions read as follows:

Note: The text of Form N–2 does not and this amendment will not appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management

* * * * *

13. Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving any existing investment advisory contract. The discussion should include:

(a) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(b) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

Instructions

1. Board approvals covered by this item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

* * * * *

Item 23. Financial Statements

* * * * *

Instructions

* * * * *

6. * * *

e. If the Registrant's board of directors approved any investment advisory contract during the period covered by the report, other than a contract that was approved by shareholders during the period, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. The discussion should include:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide

research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

f. board approvals covered by Instruction 6.e. to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6.e. include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6.e. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

* * * * *

7. Form N–3 (referenced in §§ 239.17 and 274.11b) is amended by:

a. Revising Item 20(l).

b. Adding new Instructions 6(v) and 6(vi) to Item 27(a).

The revision and additions read as follows:

Note: The text of Form N–3 does not and this amendment will not appear in the Code of Federal Regulations.

Item 20. Management

* * * * *

(l) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of managers approving any existing investment advisory contract. The discussion should include:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

Instructions

1. Board approvals covered by this item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions

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6. * * *

(v) If the Registrant's board of managers approved any investment advisory contract during the period covered by the report, other than a contract that was approved by shareholders during the period, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. The discussion should include:

(A) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. The discussion should also indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion should describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(B) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

(vi) Board approvals covered by Instruction 6(v) to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6(v) include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6(v). The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

Dated: February 11, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–3535 Filed 2–18–04; 8:45 am]

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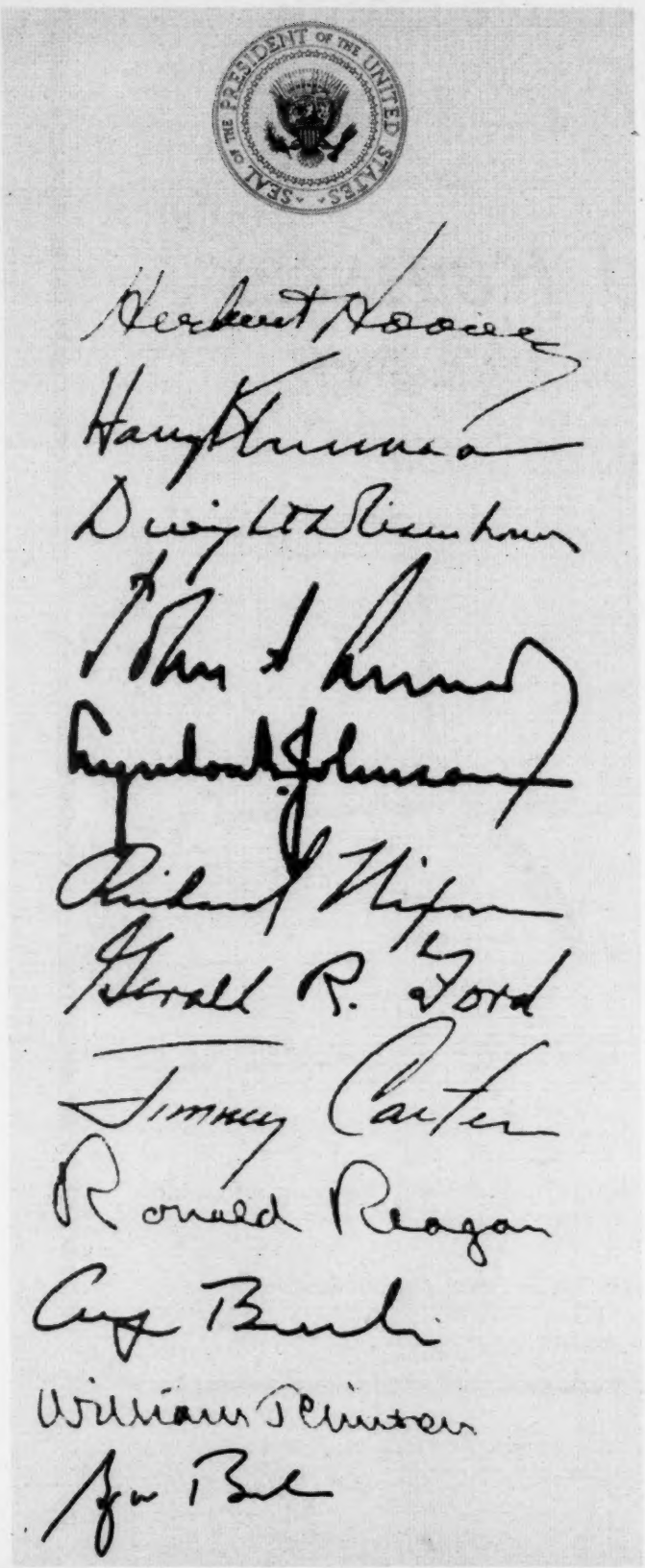

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